

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 IX
7 TIMOTHY RYAN RICHARDS)

8 TRANSCRIPT OF PROCEEDINGS
9

10
11 BEFORE: THE HONORABLE ALETA A. TRAUGER
12 DATE: OCTOBER 23, 2006
13 TIME: 10:00 A.M.
14

15 APPEARANCES:

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1 THE COURT: Good morning. Are the jurors here?

2 THE CLERK: As far as I know.

3 THE COURT: Are the jurors all here?

4 COURT SECURITY OFFICER: Yes, ma'am.

5 THE COURT: I have a preference for going ahead
6 and finishing up the proof, then we can talk about the
7 additional instruction issues unless anybody feels we need
8 to have those hashed out before we finish the proof? Can we
9 go ahead --

10 MS. HODDE: No, Your Honor. Your Honor, we may
11 have an objection to one of the poster board charts as well
12 that the government plans to use in closing, but we can take
13 that up later.

14 THE COURT: We'll take that up with
15 instructions, great. And let me make sure I know where
16 we're going.

17 The -- we're going to play the video of Mr. [REDACTED]
18 and you all have seen it, I guess, and edited it, and it's
19 readily to go?

20 MS. DAUGHTREY: I think we saw it Friday
21 afternoon, and it looked fine.

22 MS. HODDE: We did see it, and we agree there
23 was a stopping point where we need to stop the videotape.

24 THE COURT: And you are in agreement on where
25 that is, Ms. Daughtrey?

1 MS. HODDE: I think it's pretty clear on the
2 record when the court basically announced we are finished
3 with the --

4 THE COURT: Okay. All right.

5 MS. HODDE: I don't know who's going to hit the
6 stop button.

7 THE COURT: Who's playing it?

8 MS. DAUGHTREY: I am. I didn't know that.

9 THE COURT: You are apparently hitting the stop
10 button, Ms. Daughtrey.

11 MS. DAUGHTREY: Okay.

12 THE COURT: Is there going to be any other
13 rebuttal from the government?

14 MS. DAUGHTREY: Yes, there is.

15 THE COURT: What's that going to be?

16 MS. DAUGHTREY: Brooke Donahue. He was somebody
17 we were planning on calling back on Wednesday, and we will
18 be calling him at this time.

19 THE COURT: Then that's it for rebuttal,
20 correct?

21 MS. DAUGHTREY: Yes, that is correct.

22 THE COURT: Then the defense is planning to put
23 the defendant back on the stand, is that all?

24 MR. STRIANSE: That's our present intention.

25 THE COURT: Okay.

1 MR. STRIANSE: And it's literally five minutes
2 worth of direct.

3 THE COURT: And that's it, no other witnesses?

4 MS. HODDE: Right, Your Honor.

5 THE COURT: Okay.

6 MS. HODDE: One other housekeeping matter. On
7 the videotape, I'm assuming that that will be obviously
8 placed in the record as some sort of maybe court's exhibit
9 or something, but I would assume that Mr. [REDACTED]
10 videotaped testimony will not go back to the jury?

11 THE COURT: It will not go back to the jury. I
12 think for purposes of the record, we should go ahead and
13 mark it. Why don't we just make it Government's Exhibit 120
14 it is your rebuttal proof.

15 MS. DAUGHTREY: Actually we have already
16 numbered a couple of more exhibits.

17 THE COURT: Okay.

18 MS. DAUGHTREY: So I think 123.

19 THE COURT: 123?

20 MS. DAUGHTREY: Yes, we just have a couple of
21 more exhibits.

22 THE COURT: And can we go ahead and get that in
23 evidence right now, any objection?

24 MS. HODDE: No objection.

25 THE COURT: All right. So we'll mark that and

1 it will be received as Government's Exhibit 123. Okay. We
2 are ready for the jury.

3 The photos that were used with Mr. [REDACTED] is there
4 -- are there originals or something of those?

5 MS. DAUGHTREY: We do have originals and will be
6 introducing those or those are introduced in the tape as
7 Exhibit 119.

8 THE COURT: Yeah.

9 MS. DAUGHTREY: And I have the originals that I
10 will provide to the court.

11 THE COURT: Why don't you just give them to Ms.
12 Briggs-Jones because that is handled on the tape, so we
13 don't need do that in the courtroom.

14 MS. DAUGHTREY: I may need to -- I need to
15 locate those.

16 THE COURT: Okay. And just one thing for you
17 all to be thinking about on your theory of defense
18 instruction, I do not recall your client testifying that
19 Justin Berry assured him that all the performers were over
20 18.

21 Go ahead. We are ready.

22 (Jury enters.)

23 THE COURT: Good morning.

24 THE JURORS: Good morning.

25 THE COURT: You had a nice long break. I hope

1 you are well rested and ready to work hard this week. We're
2 going to have some rebuttal testimony from the government
3 right now. So, Ms. Daughtrey, are you ready with that
4 testimony?

5 MS. DAUGHTREY: Yes. It is a -- video
6 testimony.

7 THE COURT: Yes. This is a -- this is a
8 videotape of additional testimony from Patrick [REDACTED] He
9 was already back in Massachusetts or Rhode Island or
10 somewhere, Rhode Island, I guess.

11 And on Friday, he went to a location in Rhode Island,
12 and we were here at the courthouse, and we had a live feed,
13 and so his testimony was taken by video.

14 And so you are to treat this testimony as if Mr.
15 [REDACTED] were here in the witness stand. So we'll hear that
16 now.

17 MS. DAUGHTREY: Thank you.

18 (Video is played.)

19 THE COURT: All right. Good morning. We are
20 here on the government's continued rebuttal evidence, and
21 they have called as their next witness Patrick [REDACTED]

22 Mr. [REDACTED] you testified before, and you are still
23 under oath. Do you understand that?

24 THE WITNESS: Yes.

25 THE COURT: All right. And I will tell the jury

1 that there is a slight delay in terms of this -- taking this
2 testimony by video.

3 All right. Ms. Daughtrey, are you ready?

4 MS. DAUGHTREY: Yes, I am. Thank you.

5 PATRICK [REDACTED],

6 having been previously duly sworn,

7 was re-examined via videoconference,

8 and testified as follows:

9 REBUTTAL DIRECT EXAMINATION

10 BY MS. DAUGHTREY:

11 Q Good morning, Mr. [REDACTED]. Thank you for traveling.

12 A You're welcome. Good morning.

13 Q Thank you for traveling again. You are in
14 Providence, Rhode Island. Is that correct?

15 A Correct.

16 Q And the delay is because of the video conferencing,
17 and you understand that?

18 A Correct.

19 Q All right. And you understand that you're still
20 under oath from before. Is that correct?

21 A Yes.

22 Q All right. I want to turn your attention to the trip
23 from -- that you took to Iceland. Do you remember who you
24 traveled to Iceland with?

25 A Tim Richards.

1 Q And was there any one else that went with you to
2 Iceland?

3 A No.

4 Q How did you get to Iceland?

5 A Using Iceland Air.

6 Q Okay. So you flew to Iceland?

7 A Yes.

8 Q Do you have any fear of flying at all?

9 A Yes.

10 Q Okay. Did you ever go to Iceland another occasion or
11 was this the only occasion that you went?

12 A The only occasion.

13 Q Do you remember how old you were when you went to
14 Iceland this one time?

15 A Between 16 and 17.

16 Q Do you remember where you were living in the U.S. at
17 the time that you went to Iceland?

18 A [REDACTED] Maryland.

19 Q Was that with Mr. Richards' parents?

20 A Yes.

21 Q Did you pay for the trip to Iceland?

22 A No.

23 Q Who paid for the trip?

24 A I believe Alex Richards fronted most of the money for
25 it, if not all of it.

1 Q All right. And where did you stay in Iceland?

2 A We stayed at the Hotel Rachiovik.

3 Q Was that the only hotel you stayed in?

4 A No.

5 Q Okay. And can you explain why you stayed in a second
6 hotel?

7 A When it was time for to us leave, we got to the
8 gates, we went through customs. And we were awaiting for
9 the plane to board. Apparently there was a big snow storm
10 down on Maryland on the east coast, so the flight was
11 cancelled.

12 We went through customs again, and we picked a cab,
13 and we went to another hotel to wait a few days.

14 Q And do you recall which hotel that was?

15 A I can't remember the exact name of it.

16 Q Okay. Was it the same hotel that you originally
17 stayed at?

18 A No, it was a different one.

19 Q All right. And did you pay for the first hotel or do
20 you know how the first hotel was paid for?

21 A I believe Alex Richards used his money, and I think
22 it was deposited into Tim's account.

23 Q Okay. But you didn't have anything to do with the
24 financial transactions regarding the payment for the hotels?

25 A No.

1 Q All right. I would like to go through Exhibit 119.
2 It's a new exhibit that the government is introducing, and
3 we're going to show you one by one each picture. There's
4 about ten pictures, and I'm going to ask you if you
5 recognize these pictures.

6 This is the first picture of the series. Do you
7 recognize that?

8 A Yes.

9 Q And what is that picture of?

10 A A picture of a shower curtain in Iceland.

11 Q And was it at the first hotel or the second hotel
12 that you stayed at? Ms. Bakshi, if --

13 A First hotel.

14 Q -- you go ahead and put up the additional ones? Is
15 that also from the first hotel?

16 A Yes.

17 Q And who is that in the picture?

18 A Me.

19 Q Okay. And I'm going to let Ms. Bakshi just go
20 through and show you each of the individual pictures one by
21 one.

22 A Okay.

23 Q It's a little difficult to do this on the video
24 camera. Would you show the next picture, please? And
25 continue with the next picture?

1 THE COURT: Can you see these, Mr. [REDACTED]

2 THE WITNESS: Yes, I can.

3 MS. DAUGHTREY: That one is upside down.

4 BY MS. DAUGHTREY:

5 Q And these are the same series of pictures?

6 A Yes.

7 Q Okay. Could you show the next picture, please. It's
8 like looking in a double mirror to get these in front of you
9 correctly.

10 (Video continues playing as counsel comments now
11 live.)

12 MS. DAUGHTREY: Your Honor, while these are
13 being displayed on the screen, would it be possible for us
14 to give copies and -- pass copies out to the jurors. I
15 think it's very difficult to see those images.

16 THE COURT: Yes.

17 (Video continues playing.)

18 BY MS. DAUGHTREY:

19 Q I believe this is the last picture. Do you recognize
20 all these pictures?

21 A Yes.

22 Q And where were all but the last picture taken?

23 A Including the last picture, they were all taken at
24 the same hotel.

25 Q Okay. And the last picture, was that on a bed in

1 that hotel?

2 A Yes.

3 Q And all the other pictures were in the same shower?

4 A Yes.

5 Q And they are all of you. Is that correct?

6 A Yes.

7 Q And who took these pictures of you?

8 A Tim did.

9 Q And that's Mr. Richards?

10 A Correct.

11 Q Are you sure you didn't take them yourself?

12 A Yes.

13 Q Did you ever take pictures of yourself?

14 A Usually with my own web camera for my own web site.

15 Q All right. And was that in your home or where your
16 computer would be located?

17 A Yes.

18 Q Did you ever use a digital camera to take pictures of
19 yourself that you recall?

20 A If one was available, yes.

21 Q Okay. And how would you go about doing that if you
22 were to use a digital camera to take pictures of yourself
23 when no one else was there to help you?

24 A I'd would have to center it, focus it, and use the
25 timer.

1 Q And in using the timer would you have to reset the
2 timer for each different picture?

3 A You would have to go over to the camera and press the
4 button again.

5 Q For each individual picture?

6 A Yes.

7 Q Do you remember the videotape that we introduced as
8 Exhibit 14? It was a film clip of you in Iceland?

9 A Yes.

10 Q And was that videotape taken at the same period of
11 time that these photographs in the shower and on the bed
12 were taken?

13 A Yes.

14 Q And they were taken on the same trip?

15 A Yes.

16 Q Okay. And where did you get this particular set of
17 photographs that we have looked at today as part of Exhibit
18 119?

19 A I believe I found them on Tim's servers.

20 Q Who would put these images on the computer?

21 A Tim would. I would only upload stuff for my own
22 personal web site.

23 Q All right. And so these came from Mr. Richards'
24 computer. Is that correct?

25 A Yes.

1 Q I believe that's all the questions I have. Thank you
2 very much?

3 THE COURT: Cross?

4 THE WITNESS: You're welcome.

5 MR. STRIANSE: Judge, you want me to stay here
6 to ask the questions?

7 THE COURT: No, I think you should come over
8 here, Mr. Strianse.

9 REBUTTAL CROSS-EXAMINATION

10 BY MR. STRIANSE:

11 Q Good morning, Mr. [REDACTED]

12 A Good morning.

13 Q The photos that you've just identified in
14 Government's Exhibit 119, those photos were never on the
15 Internet. Is that correct?

16 A Correct.

17 Q And those photos had been in your possession,
18 correct?

19 A I downloaded them off the server. I never actually
20 had them.

21 Q And you have told us that you in the past did take
22 pictures of yourself from time to time. Is that correct?

23 A Yes.

24 Q And I think you told Ms. Daughtrey that you had used
25 a digital camera to take photos of yourself?

1 A Yes.

2 Q And in the past you have used a video camera to take
3 photos or make movies of yourself?

4 A Not of me. I have recorded Tim.

5 Q Do you remember a video that's known as Kyle_ --

6 MS. DAUGHTREY: Objection. I thought we were
7 limiting this to the Iceland pictures, and I thought that
8 was specifically what it that was we were limiting this
9 examination to.

10 THE COURT: We're going to go off the record a
11 minute."

12 (Return to live proceedings.)

13 THE COURT: Has this not been edited out?

14 THE CLERK: This is the first short one.

15 (Video commences again.)

16 THE COURT: Okay. We are back on the record.

17 BY MR. STRIANSE:

18 Q Mr. ██████████ let me ask you that question again.

19 Are you familiar with a video that's entitled
20 Kyle_jackoffshower that was made, I believe, in Bethany
21 Beach, Delaware? The video begins with you being seated on
22 a couch with your dog, Jack. Do you remember that video?

23 A Yes.

24 Q Do you remember playing with Jack in your lap and
25 also using a video camera remote to film yourself?

1 A Uh-huh.

2 MR. STRIANSE: May I have one moment?

3 THE COURT: Yes.

4 MR. STRIANSE: Those are my questions.

5 THE COURT: Any redirect?

6 MS. DAUGHTREY: May we have a moment, Your
7 Honor.

8 THE COURT: Yes.

9 MS. DAUGHTREY: Your Honor, if we may go off the
10 record momentarily?

11 THE COURT: All right. We'll go off the record.

12 (Pause on video. Video continues.)

13 BY MS. DAUGHTREY:

14 Q Mr. [REDACTED] did you download those images of you in
15 Iceland from Mr. Richards's computer for the purpose of
16 providing them to law enforcement?

17 A Yes.

18 Q And was that in approximately 2004?

19 A Sounds about the right time frame, yes.

20 Q Thank you very much.

21 THE COURT: Have you moved those into evidence?

22 MS. DAUGHTREY: If I have not, I ask at this
23 time to move Exhibit 119 into evidence.

24 THE COURT: Any objection?

25 MR. STRIANSE: No objection.

1 THE COURT: All right. They'll be received.
2 Any recross?

3 MR. STRIANSE: No recross.

4 THE COURT: All right.

5 (Video is stopped. Return to live proceedings.)

6 THE COURT: Okay. Any more rebuttal from the
7 government?

8 MS. DAUGHTREY: Yes, Your Honor, we have Special
9 Agent Brooke Donahue.

10 THE COURT: Brooke Donahue.

11 MS. HODDE: Your Honor, may we approach for a
12 moment?

13 THE COURT: All right.

14 (Bench conference begins.)

15 MS. HODDE: Can the government please advise us
16 of what Mr. Donahue is going to cover in his testimony? The
17 two things that he was going to cover when the government
18 was calling him last week, I thought, had been cleared up:
19 One, by Mr. ██████████ testimony, that we took by videotape;
20 and the second thing I thought had been cleared up when Ms.
21 Cole read back the excerpt from the record.

22 The government believed that Mr. Strianse had asked a
23 question and had elicited an answer that he had, in fact,
24 not asked and not elicited. So I'm just not sure what the
25 purpose of his testimony is.

1 THE COURT: What are you going to ask him?

2 MS. BAKSHI: We're going to ask him to identify
3 several exhibits that we will use to rebut Mr. Richards'
4 testimony.

5 And I have copies of them for -- they have been
6 provided for the court. They relate to the G-rated photos,
7 and they also relate to the Iceland photos that we have been
8 discussing.

9 THE COURT: So this is to rebut his testimony?

10 MS. DAUGHTREY: Yes, it is. Yes.

11 MS. BAKSHI: It will be a short.

12 MS. HODDE: How is he in a position to rebut
13 that?

14 THE COURT: I don't know. I guess we'll have to
15 hear what the testimony is.

16 MS. HODDE: Thank you.

17 MS. DAUGHTREY: I think Mr. Donahue should be
18 back.

19 (Bench conference concludes.)

20 THE COURT: Mr. Donahue does not answer the
21 call.

22 MS. BAKSHI: I believe he was upstairs preparing
23 exhibits, but he has been advised. He's been called. He
24 should be down momentarily.

25 THE COURT: Okay, great.

1 (Pause.)

2 MS. DAUGHTREY: Your Honor, if I may I approach
3 the court officer and give him some exhibits that we will be
4 publishing through this witness?

5 THE COURT: Okay. Ready?

6 MS. BAKSHI: Yes.

7 THE COURT: All right. Mr. Donahue, you are
8 still under oath.

9 THE WITNESS: Yes, ma'am.

10 BROOKE DONAHUE,

11 having been previously sworn,

12 was examined and testified as follows:

13 REBUTTAL DIRECT EXAMINATION

14 BY MS. BAKSHI:

15 Q Special Agent Donahue, you heard the defendant
16 testify about the Sydney, Australia photos. Is that
17 correct?

18 A Yes, I did.

19 Q And do you recall that testimony?

20 A Yes.

21 Q Do you recall that the defendant said that the
22 G-rated photos were actually taken in Sydney, Australia when
23 Patrick [REDACTED] was still a minor?

24 A Yes.

25 Q I'm going to ask the court offer officer to pass to

1 the witness a series of exhibits that have been marked
2 Government's 120, 121, and 122. Special Agent Donahue, I'm
3 going to direct --

4 MS. HODDE: Your Honor, may we have a copy?

5 BY MS. BAKSHI:

6 Q I'm going to direct your attention to Government's
7 Exhibit 120, which appears to be a picture -- well, I'll ask
8 you to direct your attention to Government's 120 which
9 relates to the G-rated section of the Sydney, Australia
10 videos -- pictures and ask if you recognize Government's
11 120?

12 A Yes, ma'am, I do.

13 Q What do you recognize it as?

14 A These are the pictures that I saw on the LA server
15 that correspond to the G-rated photos.

16 Q Are they a fair and accurate representation of what
17 you saw on that server?

18 A Yes, they are.

19 Q I'll ask -- I would request, Your Honor, that
20 Government's 120 be moved into evidence and permission to
21 publish to the jury?

22 THE COURT: Any objection?

23 MR. STRIANSE: No objection.

24 THE COURT: Received.

25 BY MS. BAKSHI:

1 Q I'm going to now just perhaps give the court officer
2 a moment to begin passing along Government's 120, which is
3 the blue one with the clips, and there's two pages in
4 Government's 120, two photographs.

5 And as the court officer is doing that, Special Agent
6 Donahue, I'm also going to redirect your attention to
7 Government's Exhibit 121. You heard that -- you heard the
8 defendant testify that the Mustang Boy pictures that
9 appeared in the Penisclub web site front page was of Patrick
10 [REDACTED] taken in Florida not long after he turned 18. Is
11 that correct?

12 A Correct.

13 Q And you observed that the defendant identified that
14 Mustang Boy picture. Is that correct?

15 A Correct.

16 Q And directing your attention to 121, I'll ask you
17 what is -- is 121 part of the series that -- part of the
18 same series of photos that the defendant pointed to when he
19 talked about Mustang boy?

20 A Yes, it's just one in the series that depicts him
21 inside the convertible white Mustang.

22 Q Okay. And is what you're seeing as Government's 121
23 a fair and accurate representation of what you have seen of
24 that photo in other places?

25 A Yes.

1 Q And where else did you see it?

2 A In the LA server.

3 MS. BAKSHI: Your Honor, I'll ask that
4 Government's 121 be moved into evidence and we have
5 permission to publish?

6 THE COURT: Any objection?

7 MR. STRIANSE: No objection.

8 THE COURT: Received.

9 BY MS. BAKSHI:

10 Q And, lastly, Special Agent Donahue, as the court
11 officer is passing out the single photograph in government's
12 121, I'm going to direct your attention -- I'm going to ask
13 you, have you had an opportunity to examine the disks of
14 photographs that were turned over by Patrick [REDACTED] to law
15 enforcement in connection with the Iceland photos?

16 A Yes, I have.

17 Q And were you able to tell whether those images had
18 been taken originally with a video camera or digital camera?

19 A By reviewing the metadata behind the picture, I was
20 able to tell it was taken with a Hewlett Packard, HP, Photo
21 Smart 318 digital camera.

22 Q That's differed from a video camera. Is that
23 correct?

24 A Yes, this is just a regular digital camera, point and
25 shoot.

1 Q That means these were photographs and not part of a
2 video tape, correct?

3 A Correct.

4 Q I'm going to pass to the witness -- I believe the
5 witness has Government's 122. Special Agent Donahue, I'm
6 going to ask to you direct your attention to that exhibit
7 and ask you what is that?

8 A This is the metadata behind the picture.

9 Q When you say it's the metadata, is it a printout out
10 of the metadata?

11 A Yes, it is.

12 Q How was that obtained?

13 A You're able to take the picture and actually open it
14 up into a text format, and behind that you can see the
15 information behind it, which is the metadata.

16 Q Did you understand the printout that resulted from
17 that process of examining the metadata?

18 A Yes.

19 Q And were you able to determine anything about whether
20 a self timer was used?

21 A Yes. As you go down, actually highlighted here, it
22 says self timer equals zero, which means that was the timer
23 setting for the camera when the picture was taken.

24 By looking at this, I can tell that there was no
25 self timer. In other words, the -- whoever took the

1 picture -- with the picture being taken, excuse me, it was
2 not set up somewhere and then a timer set up where an
3 individual could actually walk in front of the camera and a
4 picture be taken.

5 With the timer set at zero, that means someone
6 actually physically took the particular as opposed to
7 having a timer and running around in front of it.

8 Q Your Honor, I'll ask that Government's exhibit 122 be
9 moved into evidence and permission to publish to the jury?

10 THE COURT: Any objection?

11 MR. STRIANSE: No objection.

12 THE COURT: Can I just ask, when you say a --
13 what photo are you referring to?

14 BY MS. BAKSHI:

15 Q I'm going to direct the witness's attention -- to
16 clarify the question about what photos I'm referring to,
17 I'll direct your attention to what I believe is Government's
18 119, which are the series of photos that Patrick [REDACTED]
19 identified as being taken of him in a hotel room shower and
20 a hotel room bed in Iceland when he was 17 year old.

21 A Yes. These are the ones -- actually, if you look in
22 there, it is, as Ms. Bakshi mentioned, to add recollection
23 to it, it's the ones where holding the shower curtain that
24 says Icelandic Air hotel and the Hotel Loftleiter
25 (phonetic).

1 Q Your Honor, may we have permission to publish this
2 exhibit to the jury?

3 THE COURT: Yes.

4 THE WITNESS: And a point of clarification, too,
5 just so I understand. When I say that the pictures were
6 actually taken, that means they were taken by another
7 person, they were not taken by the individual depicted
8 because it's -- with a self timer is zero seconds means the
9 timer was not set, so someone else had to be actually
10 hitting the capture on the camera.

11 MS. BAKSHI: Thank you very much. Nothing
12 further.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MS. HODDE:

16 Q Good morning.

17 A Good morning, Ms. Hodde.

18 Q I want to ask you a little bit about this metadata.
19 I think this is Exhibit 122?

20 A Yes, ma'am.

21 Q Am I right about that?

22 A Uh-huh.

23 Q Did you actually take a look at the camera itself,
24 the Hewlett Packard camera?

25 A No.

1 Q You didn't have that in your possession?

2 A No.

3 Q Mr. [REDACTED] didn't turn that camera over to you?

4 A I don't have the camera itself.

5 Q Are you aware of the fact in order to be accurate
6 when comparing metadata with the reality of the photo that
7 you have to have the camera in hand?

8 A As to having the camera in hand, no, I'm not aware of
9 that.

10 Q Well, how long have you been a law enforcement
11 officer?

12 A Eight and a half years.

13 Q When you guys go in and search a home and seize video
14 camera equipment, you all do that on a regular basis, I
15 assume, correct?

16 A Yes.

17 Q And you find that that camera has a live charge still
18 on the battery, you take that camera and you keep it plugged
19 into the wall, don't you?

20 A I'm sorry. I don't understand.

21 Q I may not be asking a very good question.

22 A Okay.

23 Q Let me try it gain. When you seize a camera from
24 inside somebody's home and you see it's still alive, it has
25 a live battery in it and the back-up battery hasn't died off

1 yet, isn't one of the things that you do is keep the battery
2 charged so that you don't lose those settings that the user
3 had in the camera?

4 A I personally don't. I seize the camera and then turn
5 the camera over to CART.

6 Q Are you aware that that's one of the obligations of
7 the CART examiner, and that's one of the things that these
8 forensics guys do, is they make sure that battery never
9 dies?

10 A I would assume that would be something that they
11 would have done.

12 Q Because you know that in order to compare the
13 metadata and really draw any significance from it, they have
14 to have the camera in hand, don't they?

15 A That would help.

16 Q Now, I've seen this exhibit, 122, and I see what you
17 have highlighted. I notice that what you don't have
18 highlighted is date and time?

19 A Yes.

20 Q Is that correct?

21 A Because the date and time is way off.

22 Q Because you can't understand the date and time?

23 A Well, yeah, because, I mean, you are looking at all
24 these series of numbers, and there's an algorithm to figure
25 it out, but, obviously, I wasn't able to do that.

1 Q So you're not suggesting to this jury that you can
2 look at this metadata and place this photo as being taken in
3 Iceland when Mr. [REDACTED] was 16 or 17, are you?

4 A Are you saying that the metadata is saying it would
5 capture his age and put that in the metadata.

6 Q No, I'm saying you are aware that a properly set
7 camera -- if I were to properly set my camera and go take
8 some still photos --

9 A Okay.

10 Q -- that in that metadata would be an accurate date
11 and time that we could then date the photo with, correct?

12 A If it was properly set, yes. But then at the same
13 time, there's also exit standards that does capture certain
14 parts of that camera, things that if you do not set the date
15 and time correctly, it's going to go ahead and capture, but
16 obviously not the correct date and time, but it is going to
17 correct certain settings in the camera.

18 Q And this date and time that is indicated without the
19 highlight in your metadata printout, if you had seized a
20 camera, if this camera had been seized and the battery had
21 been maintained and the date and time had been correctly
22 set, you would hope that that date would reflect the
23 appropriate time that the photograph was taken, correct?

24 A But actually there as an algorithm where you can plug
25 in time and date stamp which you see right there and come to

1 some indication, actually find out if the individual ever
2 had even set it.

3 Q Did you do that in this case?

4 A No, I did not. That's a little above me, the
5 algorithm is, I'm sorry.

6 Q So you're not suggesting to this jury that this
7 metadata affirmatively dates those photographs, are you?

8 A No, it was never my testimony that it dated the
9 photograph, just the setting of the camera.

10 Q Your Honor, may I have a moment?

11 THE COURT: Yes.

12 MS. HODDE: That's all.

13 THE COURT: Any redirect?

14 MS. BAKSHI: Just a couple of clarification
15 questions.

16 REBUTTAL REDIRECT EXAMINATION

17 BY MS. BAKSHI:

18 Q Special Agent Donahue, on this issue of the clock, is
19 it your -- can you explain whether or not the clock can be
20 set to whatever time that the user wants?

21 A Yes, you could set it to anything.

22 Q And is it the case that often people don't bother to
23 set it correctly?

24 A If they wanted it actually posted on the picture,
25 itself, I would think they would; but if they didn't, it

1 really doesn't serve a purpose to have it set.

2 Q Does that have anything to do whatsoever with your
3 testimony about whether or not that self timer was on or
4 off?

5 A The only thing I testified to was the self timer,
6 itself, and the exit data captured when the picture was
7 taken. I didn't testify in any way of actually the time
8 frame -- the metadata behind capturing the time frame of
9 when it was taken because I don't know that. I don't have
10 that algorithm to figure that out.

11 Q In your investigation, did you rely upon other
12 circumstantial evidence, including border records, to date
13 the -- to develop an opinion about the date at which these
14 photographs were taken in Iceland?

15 A Yes.

16 Q And for clarification, I want to be 100 percent clear
17 here, is your testimony that this metadata tells you the
18 camera that took these pictures had the self timer off?

19 A Correct, set to zero, which means an individual --
20 another individual was hitting the camera taking the
21 pictures.

22 Q Okay. Also, Ms. Hodde talked about -- said something
23 about a live charge and CART, which is presumably the
24 computer analysis recovery team of the FBI, had some
25 standards with respect to when a camera is found and seized.

1 Do you recall that testimony?

2 A Yes.

3 Q Does that have anything -- does that in any way
4 change your testimony about this issue of the self timer and
5 what this metadata tells you about the self timer?

6 A No.

7 Q Okay. Thank you.

8 MS. HODDE: Nothing further.

9 THE COURT: Okay. You may step down, Agent
10 Donahue. Any more rebuttal from the government?

11 MS. BAKSHI: That's all, Your Honor.

12 THE COURT: Okay. Any rebuttal from the
13 defendant?

14 MR. STRIANSE: Just very briefly.

15 THE COURT: Okay.

16 MR. STRIANSE: We'd recall Mr. Timothy Richards.

17 THE COURT: Mr. Richards, you are still under
18 oath.

19 TIMOTHY RICHARDS,

20 having been previously sworn,

21 was examined and testified as follows:

22 REBUTTAL DIRECT EXAMINATION

23 BY MR. STRIANSE:

24 Q Good morning, Mr. Richards.

25 A Good morning.

1 Q Last week the jury heard from a witness by the name
2 of Kent [REDACTED] Do you remember Mr. [REDACTED] testimony?

3 A Yes, I do.

4 Q And explain to the jury how you knew Mr. [REDACTED]

5 A Mr. [REDACTED] was a member of my original web site,
6 Caseysapartment back when I was 18.

7 Q What year would we be talking about then?

8 A This is 1999.

9 Q And explain to the jury how you came to meet this Mr.
10 [REDACTED]

11 A Well, this is, of course, when I had just started the
12 web site and was fairly new at all this. And Mr. [REDACTED]
13 was in the chat room frequently. Almost around the clock,
14 he was there. So he would often talk to me. And I
15 eventually came to meet him and a couple of other people out
16 in Las Vegas.

17 Q How old were you at the time?

18 A I was 18.

19 Q And how old was Mr. [REDACTED] roughly?

20 A Around 40.

21 Q Did there come point in time that Mr. [REDACTED] took a
22 job with you?

23 A Yeah. When the billing company, NIMEbill.com,
24 started being very successful, we started hiring employees,
25 we had several of them, and he expressed an interest. And

1 we ended up hiring him.

2 Q Do you remember approximately when it was that he
3 came to work for you?

4 A Late '99, early 2000.

5 Q What was his job supposed to be?

6 A He was going to be a personal assistant to me, which
7 would be basically doing a lot of different things, like
8 running FedEx packages, going to the office supply store,
9 all the way down to things like making sure the house stayed
10 clean, and stuff like that.

11 Q Was he paid a salary?

12 A Yes, he was.

13 Q Was he given a place to live?

14 A Yes, he was.

15 Q And where was he given a place to live?

16 A He was housed at one of the apartment buildings that
17 we rented at the time, the company did, nearby my house.

18 Q Did there -- how long did he work for you?

19 A Maybe six months.

20 Q Did there come a point in time that you had to fire
21 Mr. [REDACTED]

22 A Yes, there did. We started -- at least at first when
23 we first jumped into this business and started making money,
24 and by "this business", I'm primarily talking about hosting
25 and billing but also the adult site, we started just hiring

1 a bunch of our friends, really, and we got into a situation
2 where we were paying a bunch of people but no one was
3 working, which made us start looking at all of our employees
4 more carefully and trying to get more serious about the
5 company.

6 During the process of doing this, we started doing
7 things like installing a net sniffer, they are called,
8 which would watch traffic going in and out of our apartment
9 complexes and any connection that the company paid for.

10 In the course of doing this, we discovered a
11 personal out on a web site called XY.com, which is targeted
12 to gay teens, 16 to 25 year old gay youth.

13 And there was a single page display which had a
14 picture of my friend, [REDACTED] who is a straight
15 man, and it claimed that he was 16 years old living in the
16 city that we lived in, in Massachusetts, and asking to
17 contact other guys his own age in that city.

18 We obviously knew that my straight friend Chris,
19 from Maryland, would not be posting photos of himself
20 asking to meet other men his own age in Massachusetts. So
21 we looked further into it and found out that Mr. [REDACTED]
22 was the one posting those images.

23 Q And did you confront Mr. [REDACTED] about it?

24 A We actual little had a discussion about it. We had a
25 meeting. And to tell you the truth, we were all very scared

1 of him. And we decided we wanted to fire him, but we didn't
2 know how to go about doing it. It was my first time hiring
3 somebody or firing somebody.

4 I eventually took up the responsibility for handling
5 it. I said since I was the one who hired him, I would be
6 the one that fired him.

7 And we decided to approach it in a less
8 confrontational manner by having us just tell him that we
9 couldn't afford him anymore and give him a him little bit
10 of money and a certain amount of time to get his life back
11 together because he had moved from Minnesota, and we didn't
12 want to just throw him out on the streets. So we gave him
13 a couple of months free; I believe it was five months.

14 Q Did you propose a severance package, if you will, to
15 Mr. [REDACTED]

16 A Yes, part of that -- part of when I laid him off was
17 I gave him a \$2,000 severance package.

18 Q And you let him remain in that apartment?

19 A Yes, rent free in the apartment.

20 Q As far as you knew, did he ever leave the apartment?

21 A No, we never saw him leave. From that point on, he
22 locked himself in the bedroom and became very agitated with
23 me. And I really didn't talk to him again after that point.

24 Q And you let him stay there rent free for how many
25 months?

1 A Five months.

2 Q After he left the apartment, did you go in an inspect
3 it?

4 A Yes, we did.

5 MS. DAUGHTREY: I'm going to ask what the
6 relevance of this is at this point. I'm not sure where we
7 are heading.

8 THE COURT: Do you need to approach?

9 (Bench conference begins.)

10 THE COURT: What's the relevance?

11 MR. STRIANSE: I was going to say that he
12 basically destroyed the apartment, punched holes in the
13 walls. I think it's relevant to show his motive is bias,
14 animus he had to Mr. Richards because of the failed working
15 relationship.

16 MS. DAUGHTREY: I don't think there's any
17 relevance at this point. I think he's covered everything
18 that is relevant about this man.

19 THE COURT: I think it's relevant to bias.

20 MS. BAKSHI: May I add while we are here, Your
21 Honor, I'll defer to Ms. Daughtrey on this, but I believe by
22 introducing all of this information or supposed information
23 about the defendant -- excuse me, about the witness's bias,
24 it's becoming more and more important to show he actually
25 gave this to another -- or at least a third -- credible

1 third party, the Boston Herald.

2 THE COURT: Gave what?

3 MS. BAKSHI: All the chat logs that were part of
4 this, and he didn't just come up with this.

5 THE COURT: He testified he gave them to --

6 MS. DAUGHTREY: A reporter.

7 THE COURT: -- a reporter, and he got a copy
8 back? Then he said he got a copy back from the reporter.

9 MS. DAUGHTREY: If he's going to get into the
10 credibility of Mr. [REDACTED] I think it would be appropriate
11 to explore a little more about his -- his -- this
12 involvement with the Boston Herald because Mr. Richards also
13 involved himself with all of this reporting to the police
14 about Mr. [REDACTED] and things like that.

15 MR. STRIANSE: Your Honor, I attacked his
16 credibility when he testified in the government's case in
17 chief. That didn't open up the door for any Boston Herald
18 investigation.

19 THE COURT: I think we are leaving this alone.
20 You can do this one question, and that will be it.

21 MR. STRIANSE: Okay.

22 (Bench conference concludes.)

23 BY MR. STRIANSE:

24 Q I was asking you what condition did Mr. [REDACTED] be
25 leave the company apartment in?

1 A The room was literally filled about up to my waist
2 level with beer cans. And there was several holes in the
3 wall and in about as bad -- about as bad as could you leave
4 an apartment.

5 Q Mr. [REDACTED] was shown what purported be a chat where
6 he was using the screen name Shane Putz. Did you know him
7 to use that screen name?

8 A Yes, I believe he did use that screen name.

9 Q And speaking to someone using the screen name
10 Inferango (phonetic), if I read it properly --

11 A Correct, that's what I saw.

12 Q -- did you see that? Did you use the screen name
13 Inferango?

14 A I believe during that period of time I used the
15 screen name Surge Car.

16 Q Did you participate in that chat that Mr. [REDACTED]
17 identified for the jury?

18 A No, I did not.

19 Q Let me have move to another area. The jury was shown
20 via the video testimony of Mr. [REDACTED] an identification of
21 Government's Collective Exhibit 119 that purports to be some
22 Iceland photos. Did you see that?

23 A Yes, I did.

24 Q Did you take those photos, Mr. Richards?

25 A No, I did not.

1 Q The jury was shown an exhibit this morning,
2 Government's Exhibit 120, did you see that? It was what has
3 been characterized as the G-rated photos?

4 A Yes, I did.

5 Q Explain to the jury what was the clothing situation
6 as it existed between you and Mr. [REDACTED] back during that
7 time frame, 2002, 2003?

8 A Okay. When -- me and Pat were both the same size.
9 We are the same shoe size, same pant size, same shirt size,
10 so we would often share clothes. But starting in August of
11 '02, we moved down to my parents' house, and he left most of
12 his clothing at his mom's house.

13 And I had had my entire house boxed up by
14 professional movers and supposedly shipped down to Florida,
15 which included most of my clothes. I had a suitcase left
16 full of clothes.

17 So when we got to Maryland, and this is, again,
18 September, August of '02, we had maybe between us, if we
19 were lucky, ten pairs of clothing that we would both wear
20 and both share. And that lasted all the way until we
21 finally got my stuff back when we -- the movers actually
22 ended up going out of business, and they found my clothing
23 and everything, and all my furniture at some storage place
24 up in Connecticut in September of 2003. And that's when we
25 went back and picked up those clothes.

1 Q Was there a receipt or record that helped refresh
2 your recollection about picking up the clothing that had
3 been lost in storage?

4 A Yeah. As I said, I had paid professional movers to
5 move it down there, so when I found out the stuff got
6 stranded in Connecticut, I was stuck having to pay again,
7 and I didn't have the money for it, so my father rented on
8 his credit card a truck, and we went up to Connecticut and
9 picked up the packages from the storage place.

10 Q Mr. Richards, let me show you what we'll have marked
11 for identification as the next numbered defense exhibit, and
12 I would like to put it on the screen, if I could, if I can
13 figure out how to turn this on. Mr. Richards, do you see
14 that?

15 A Yes, I do.

16 Q The top of the statement says Citicard Advantage. Is
17 that right --

18 A Yes, it does.

19 Q -- 2003 transactions? And let me see if I can make
20 it a little bit bigger.

21 Explain to the jury what is depicted on that exhibit
22 and how it helps refresh your recollection about the storage
23 of clothing?

24 A That's the rental truck from Budget or Ryder. I
25 believe they are the same company. And it's a little hard

1 to read, but I think it says 9/15 of 2003, which is when my
2 dad rented the truck with me, and a couple of days later we
3 show a credit in Tampa, Florida where we delivered the
4 truck.

5 Q Again tell the jury what occasioned the need for your
6 father to have to rent a Ryder truck?

7 A Again, I had paid movers, and they had left all of my
8 stuff -- had abandoned it, really, at a storage facility in
9 one of the cities in Connecticut.

10 And they were getting ready to actually throw out
11 everything, and they dug through some of the stuff and
12 found my name and address in Maryland at my parents' house
13 and called and asked if we wanted it before they auctioned
14 everything off.

15 Q Your Honor, we would offer that as the next numbered
16 defense exhibit?

17 THE COURT: Okay. That's number 19?

18 THE CLERK: Yes, ma'am.

19 THE COURT: Any objection?

20 MS. DAUGHTREY: No objection.

21 THE COURT: Received.

22 BY MR. STRIANSE:

23 Q Mr. Richards, the jury was shown this morning
24 Government Exhibit 121 which purported to be one of the
25 Mustang Boy series, did you see that photo?

1 A Yes, I did.

2 Q When was that photo taken?

3 A That was, I believe, the last photo series we ever
4 took of Pat, which would have been in March of 2004.

5 Q And how old would Mr. [REDACTED] have been in March of
6 2004?

7 A He was 18 and would have been turning 19 that summer.

8 Q Did Mr. [REDACTED] own a digital camera?

9 A Yes, he did.

10 Q And what kind of a digital camera did he own?

11 A He had a Hewlitt Packard Photo Smart digital camera.

12 Q Did you have a digital camera that you owned?

13 A Yes, I do.

14 Q What was the brand of your camera?

15 A Mine was an Epson.

16 Q May I have one moment, Your Honor?

17 THE COURT: Yes.

18 (Pause.)

19 MR. STRIANSE: That's all.

20 THE COURT: Cross?

21 MS. DAUGHTREY: Yes, Your Honor.

22 REBUTTAL CROSS-EXAMINATION

23 BY MS. DAUGHTREY:

24 Q Mr. Richards, do I recall your testimony right that
25 you and Mr. [REDACTED] had broken up in December of 2003?

1 MR. STRIANSE: Object to this. This is beyond
2 the scope of --

3 THE COURT: Is this going to lead into something
4 he testified about right now?

5 MS. DAUGHTREY: This is directly related to this
6 March 2004 testimony.

7 THE COURT: Okay. Overruled.

8 MS. DAUGHTREY: Let me ask my question again.
9 If you could answer yes or no, please.

10 THE WITNESS: Okay.

11 BY MS. DAUGHTREY:

12 Q Did you not testify on direct examination that you
13 and Mr. ██████ broke up in December of 2003?

14 A The break-up started in December of 2003, yes.

15 Q Okay. And that last exhibit that Mr. Strianse had
16 put on the overhead, that was your dad's credit card. Is
17 that right?

18 A Yes, ma'am.

19 Q All right. And didn't you tell us on
20 cross-examination that you used Inferango as one of your
21 online identities?

22 A I don't remember saying that.

23 Q All right. And you indicated that with regard to Mr.
24 ██████ that you were scared of him?

25 A Yes.

1 Q And were you mad at him because he was posing as your
2 friend?

3 A I wasn't mad at him. I never said that.

4 Q Were you mad at him because he turned these chats
5 over to a reporter?

6 A That came on much later, but they were not my chats.

7 Q And so you're scared and you're mad at this
8 particular person, and you gave him a \$2,000 severance and
9 five months of rent free?

10 A I was scared of him in terms of how he would react to
11 firing in terms of confronting him, so, no, I didn't
12 confront him.

13 That's why we chose to lay him off instead, and I
14 didn't become mad at him until much later after he left. I
15 wouldn't have allowed him to stay there for five months if
16 I was mad at him.

17 Q So it's your testimony that you never bothered to
18 tell Mr. [REDACTED] why you laid him off?

19 A Well, again, we used the excuse that we just couldn't
20 afford him anymore.

21 Q All right. And how exactly -- tell this jury how
22 exactly it was that you figured out that Mr. [REDACTED] was
23 the one who was posing as [REDACTED]

24 A Sure. Each computer through the router, where the
25 net sniffer is connected, has a unique internal IP address

1 that's assigned to each computer, and it came from his
2 internal IP address.

3 Q So it came from the computer that was in his
4 particular apartment?

5 A In his room, yes.

6 Q So you were watching everybody who was working for
7 you?

8 A Not me personally, but, yeah, someone else in the
9 company was, yes.

10 Q Who else was that?

11 A Mr. Brown.

12 Q Mr. Brown?

13 A Yes, ma'am.

14 Q And he was one of your business partners in the
15 NIMEnet. Is that correct?

16 A Yes, in NIMEnet and NIMEbill, he was.

17 Q If I may have just a moment?

18 MS. DAUGHTREY: That's all I have. Thank you.

19 THE COURT: Anything else?

20 MR. STRIANSE: Nothing further.

21 THE COURT: You may step down, Mr. Richards.

22 MR. STRIANSE: No further surrebuttal.

23 THE COURT: Any other -- okay. Anything else
24 from the government?

25 MS. DAUGHTREY: No, Your Honor.

1 THE COURT: All right. Would you all approach
2 the bench for a minute?

3 (Bench conference begins.)

4 THE COURT: How long is the government's
5 closing?

6 MS. DAUGHTREY: It's probably going to be -- I
7 don't know, I can't say that I've given it all -- a time.
8 It's very long because --

9 THE COURT: Over an hour?

10 MS. DAUGHTREY: It's over an hour, yes, and we
11 actually need some time to set up audio. We're going to
12 have a Power Point presentation that goes along with it.
13 The Power Point is essentially just going through the
14 exhibits.

15 THE COURT: Okay.

16 MS. HODDE: Your Honor, at this point in time, I
17 do want to for the record to renew Mr. Richards' motion for
18 judgment of acquittal based on the same grounds we've
19 already articulated to the court.

20 THE COURT: That will be denied. Okay. Maybe
21 it makes sense to have them go to lunch and come back at
22 12:30?

23 MS. DAUGHTREY: That would be fine.

24 THE COURT: Then we could get through the
25 instruction issues and start closing then.

1 MS. DAUGHTREY: That would be fine.

2 THE COURT: Okay.

3 MS. DAUGHTREY: And we have -- we have a motion
4 or response to one of their jury instructions that we would
5 like to file at this time.

6 THE COURT: Yes.

7 MS. BAKSHI: The theory of defense instruction.

8 THE COURT: That's fine. All right.

9 (Bench conference concludes.)

10 THE COURT: Okay. Members of the jury, the
11 proof is closed in this case. You still have two very
12 important parts of the trial to hear before you begin
13 deliberating, and that is the closing arguments of counsel
14 and then the instructions of the court.

15 We're going to let you take your lunch recess at this
16 time, and we're going to ask you to come back in an hour and
17 a half. If you would come back basically at 12:30, then
18 we'll have the conclusion of those pieces of the trial, and
19 then you will begin your deliberation this afternoon.

20 Hopefully you will begin your deliberations this
21 afternoon. So once again, it's not time to start talking
22 about the trial yet because you have two very, very
23 important pieces yet. So at this point we're going to
24 excuse you for your lunch recess, and we'll see you back at
25 12:30.

1 (Jury exits.)

2 THE COURT: Okay. Let's take these things up,
3 additional requests, and so forth, one at a time.

4 Let me hear the government's position on the defense
5 request for the theory of defense instruction.

6 MS. DAUGHTREY: Your Honor, I have just
7 submitted to Betty both a copy of and the original response
8 that the government is filing with regard to the defense
9 theory.

10 THE COURT: All right. Well, you are going to
11 have to summarize it for me because we're going to deal with
12 this right now, and I don't have time to read this.

13 MS. DAUGHTREY: I'll let Ms. Bakshi do that.
14 She's the one whose been working on that issue.

15 THE COURT: All right.

16 MS. BAKSHI: Your Honor, as we've outlined in
17 this very brief motion that we have just submitted to this
18 court, we have several objections to the proposed jury
19 instruction number 10.

20 I'll begin with continued misuse of the term good
21 faith, as we argued in response to --

22 THE COURT: I'm going to take good faith out.

23 MS. BAKSHI: Thank you, Your Honor.

24 THE COURT: Good faith is not a defense, and
25 this instruction would make the jury believe that good faith

1 is a defense. So the "in good faith" in the second line
2 will be removed.

3 And to the extent that the second to the last
4 paragraph is retained, "good faith" will be removed from the
5 second line of that paragraph.

6 Okay. Your next objection?

7 MS. BAKSHI: Thank you, Your Honor. The second
8 problem we have with this proposed theory relates to what
9 is -- I believe it's in the first paragraph of the theory of
10 defense.

11 Specifically it says in that paragraph that --
12 actually, it's the first sentence: Mr. Richards denies each
13 and every allegation and says he believes in good faith.
14 And is this the part that we object about: That every
15 performer depicted in sexually explicit images that you have
16 seen in the course of this trial was over the age of 18.

17 This is an inaccurate statement of the proof. First
18 of all, Mr. Richards admitted that the photos that were the
19 subject of the Kylewoods were taken when Patrick [REDACTED]
20 was a minor. There is -- and he admitted that on the stand.

21 He estimated the age was 16 compared to Patrick
22 [REDACTED] testimony of 14. However, in response on
23 cross-examination to Ms. Daughtrey's question about whether
24 or not he acknowledged that Patrick [REDACTED] was indeed a
25 minor in this picture, his response was, oh, yes.

1 So in this way, he, himself, has testified that at
2 least one of those images that appears on these web sites
3 was indeed a minor depicted in sexually explicit conduct.

4 Beyond that, with respect to [REDACTED] who's
5 also known as Tory, which is the subject of distribution
6 charges as well as production charges, the defendant and the
7 defense have not controverted the testimony that
8 Mr. Billings was underage in January of 2002 when that
9 production was made -- when the production of the Tory DVD
10 and Paint Tory material was made.

11 They are saying that they don't agree that he knew
12 that Mr. Billings was under 18 at that point, but they had
13 not challenged the testimony of Mr. [REDACTED] that that was
14 taken in January of 2002.

15 And, in fact, the defendant confirmed on the stand
16 that it was taken in 2002. And we played the videotape, to
17 which they did not challenge, that said that it was filmed
18 in January.

19 We also have other less direct but still
20 circumstantial and relevant testimony that that video was
21 formed in connection with a pornography convention that
22 occurred in January again of 2002.

23 So in that way, taking that in connection with the
24 fact that the birth certificate of Mr. Billings was brought
25 into evidence through stipulation, there's been no challenge

1 to the fact that Mr. Billings was indeed underage at the
2 time of production on those videos.

3 They can argue, and I'm sure they will argue, that he
4 didn't know that, but the statement is inaccurate as to

5 [REDACTED]

6 Then, of course, with respect to Taylor, who's still
7 a minor, this statement is inaccurate to Taylor. Anywhere
8 that he would have appeared, and the government has provided
9 proof that he has appeared engaged in sexually explicit
10 conduct in the form of masturbation on the Justinsfriends
11 site, he would certainly be minor because he's still a minor
12 today.

13 So for those reasons, we object to that particular
14 part of the first paragraph of defense theory.

15 Shall I move on to the next complaint? The next
16 thing that we wanted to state our objection to is the use of
17 the term "mere distributor". This, I believe, is on page 4
18 of defense motion in the first full paragraph.

19 It talks about how Mr. Richards made a good faith
20 effort to comply with record-keeping requirements. And in
21 the second full sentence in that paragraph, it says,
22 however, as a secondary producer, he was not responsible for
23 keeping records for sexually explicit conduct for which he
24 was merely distributing or for other activity which did not
25 involve the hiring, contracting, et cetera, for the

1 participation of the performers therein.

2 THE COURT: Yeah, I'm taking out that sentence
3 that begins "however" because that -- we already have in the
4 instructions the proper language on this charge. And it
5 doesn't belong in the theory of the defense, so I'm taking
6 out that sentence.

7 MS. BAKSHI: Thank you, Your Honor. And we'd
8 ask that he not be referred to as mere distributor when he
9 has not contradicted the testimony that he was not only the
10 distributor of -- now he's charged as distributor or
11 secondary producer --

12 THE COURT: Where is mere distributor?

13 MS. BAKSHI: It's in the sentence that you take
14 out, and I'm asking that they not refer to him as mere
15 distributor simply because it's factually inaccurate.

16 THE COURT: Well, I'm taking that language out
17 of defense theory. I'm not going to rule on anything else
18 that's not in front me.

19 MS. BAKSHI: Thank you, Your Honor. And lastly,
20 we ask that -- excuse me. There's two more points.

21 On page 4 of the government response, we state -- we
22 object to the inaccurate statement that all of the content
23 in the entire Justinsfriends site was made or otherwise
24 procured by Justin Berry and his partner Greg Mitchell.

25 The undisputed evidence shows that the

1 Justinsfriends.com and Justinsfriends.net site included the
2 image, and the image is called JF_fucking. The defendant
3 has admitted during his testimony that he, the defendant,
4 appears in that contest -- excuse me, that content, although
5 he did contest the place of production.

6 As the court may recall, Patrick [REDACTED] testified
7 that was taken in Iceland. And upon his testimony, the
8 defendant said that he -- it was not taken in Iceland but he
9 did not deny that he was in that photo and that that content
10 pertains to him.

11 Then the government in the context of showing pages
12 associated with the Justinsfriends site showed that image,
13 JF_fucking. And in this way, it's clear that the content
14 associated with at least that particular image is indeed
15 associated with this defense and it was this defendant.

16 And he has made no statement, nor would it make sense
17 to make any statement, that Justin Berry procured that
18 content. It was, in fact, the defendant appearing in that
19 content and the defendant putting it on that site.

20 And that information has not been contested in any
21 way by the evidence that's in the record.

22 And lastly, on a similar point, the government
23 objects to the inaccurate statement -- set of statements
24 that also appear on page 4, I believe.

25 The inaccurate set of statements that the

1 co-conspirator Justin Berry inform the defendant that the
2 minor Taylor was an adult, and that was confirmed by the
3 Taylor biography.

4 It is our contention that there is no evidence in the
5 record that Justin Berry told the defendant that Taylor was
6 an adult apart from whatever the defendant may have inferred
7 from the Tay biography.

8 The defendant's theory instruction appears to imply
9 that there are two separate pieces of evidence related to
10 Justin Berry's tricking the defendant to believing that 14
11 year old Taylor was instead an adult.

12 THE COURT: Okay. Let me hear from the
13 defendant.

14 MS. HODDE: Your Honor, on the first page of the
15 theory of defense instruction, I guess it's my understanding
16 that the words "in good faith" would be stricken from the
17 sentence?

18 THE COURT: Yes.

19 MS. HODDE: I would suggest to address this
20 concern -- I agree that this sentence when you read it in
21 isolation doesn't seem to correctly state our position.

22 Our position that is either the alleged victim was
23 over the age of 18 or the defendant believed the person was
24 over 18, so it's an either-or situation. That is our
25 defense.

1 So, I mean, our insistence as to Mr. ██████ is
2 going to be that Mr. ██████ was over 18 in these photos,
3 in the graphic, sexually explicit photos that have been
4 demonstrated to the court and to the jury.

5 So I think that the first sentence should be modified
6 to basically add the words at the end of -- that every
7 performer depicted in sexually explicit images that you have
8 seen in the course of this trial were -- I guess were either
9 over the age of 18 or Mr. Richards believed the performer
10 was over the age of 18.

11 THE COURT: Well, the sentence says -- insists
12 that he believed that every performer depicted was over the
13 age of 18.

14 MS. HODDE: So it may be sufficient as written,
15 but I wanted to make that absolutely clear, that that is our
16 insistence, not the definitive statement that -- obviously,
17 Taylor is still underage, so --

18 THE COURT: I think the point the government is
19 making is that this statement, this first sentence, is
20 inconsistent with the defendant's own testimony.

21 MS. HODDE: I respectfully disagree with the
22 government. I don't believe that it is.

23 Mr. Richards' position is going to be that anything
24 that he knew about relating -- and what Mr. Richards said
25 from the witness stand was that any of these Kyle images

1 that were produced by Kyle and placed on Kylesroom by Kyle,
2 a/k/a Pat [REDACTED] that those images either were not
3 sexually explicit or they weren't created by this defendant.

4 THE COURT: Well, what about Taylor?

5 MS. HODDE: Taylor is a separate issue. That
6 didn't relate to Mr. [REDACTED]

7 That would be -- the Taylor image, as the court will
8 recall, is -- depending on which exhibit we look at, is
9 either the full image of Mr. -- Justin Berry and Taylor
10 masturbating jointly with each other on a bed or the
11 isolated image of just Taylor from the same image.

12 That was an image created by Mr. Berry, placed on
13 Justinsfriends by Mr. Berry. That was wholly produced,
14 made, absolutely without Mr. Richards being present.

15 There's no suggestion in this record that Mr.
16 Richards even ever met Taylor or had anything to do with
17 him.

18 THE COURT: This sentence, Ms. Hodde, says every
19 performer depicted in the sexually explicit images that you
20 have seen in the course of this trial. That would cover
21 images of Taylor.

22 MS. HODDE: Right. And I think the issue is
23 that he believed that every performer depicted was over the
24 age of 18, and I think the proof is that Mr. Richards did
25 believe that Taylor was over the age of 18.

1 THE COURT: All right. Move on to the next one.

2 MS. HODDE: So that's my argument on that.

3 THE COURT: All right.

4 MS. HODDE: Your Honor, I guess I'm not sure
5 exactly which section the government is seeking to redact
6 next.

7 I know the court has granted striking that second
8 sentence from the second to last paragraph, and I know that
9 the court is going to redact the good faith --

10 THE COURT: Good faith.

11 MS. HODDE: -- language from that second
12 sentence, so I think that basically that leaves us in a
13 position where I think that the theory of defense
14 instruction is accurate. It clearly conveys the theory of
15 defense.

16 THE COURT: And the government touched on this,
17 and I'm not sure I accurately heard them, but as I mentioned
18 to you right before the jury came in, at the bottom of page
19 3, Mr. Richards was assured by Justin Berry, the original
20 owner of the site, that all performers were over the age of
21 18, I simply do not remember that testimony.

22 It would have been hearsay, would have been offered
23 for the truth of the statement. I have just looked back
24 through my notes. I don't find that he testified that
25 Justin Berry said that.

1 He did testify that he relied on the biography
2 sections, and things like that. But I don't recall that
3 testimony. Does the government recall that testimony?

4 MS. BAKSHI: No.

5 THE COURT: Am I just misremembering.

6 MS. BAKSHI: No, that is actually one of the
7 things I was trying to communicate, that it comes across as
8 two separate things.

9 And it is certainly our recollection that the only
10 evidence put into the record was related to the Tay
11 biography and whatever the defendant may have inferred from
12 that.

13 MS. HODDE: Your Honor, may I have one moment so
14 I can consult?

15 (Pause.)

16 THE COURT: I believe that my antennae would
17 have been very high, and the government's antennae would
18 have been very high. And you would have been jubilant had
19 you gotten that testimony in. That's just rank hearsay.

20 They crossed Justin Berry off their list. He didn't
21 testify. That would definitely have been offered for the
22 truth of the statement and a very important piece of proof.

23 So unless you can point me to part of the transcript
24 where he testified to it, that's not going to stay in here.

25 MS. HODDE: Your Honor, I can't point the court

1 to that section of the transcript. I don't have a
2 recollection really either way, and I take the court at its
3 word on its notes.

4 The gist of the sentence, however, is that Mr.
5 Richards was assured by Justin Berry -- I think that we can
6 recraft that sentence to convey the same message which is
7 that Mr. -- that based on the tacit representations of
8 Mr. Berry, including the biography section of the web site,
9 that he absolutely believed that the performers were over
10 the age of 18.

11 And I don't know how we need to rework the words, but
12 I think we can rework them.

13 THE COURT: Work on that sentence, if you will,
14 and give me some revised wording.

15 The other problem that the court had with this theory
16 was the last paragraph is too simple, it seems to me. We
17 have got some very complex instructions here, and it's not
18 part of your theory. This is part of the court's general
19 instructions, and --

20 MS. HODDE: Well, Your Honor, I think this is an
21 appropriate sentence. I have -- certainly in every theory
22 of defense instruction that I have put together in a case, I
23 have certainly included the connection for the jury between
24 how the theory of defense gets you to the acquittal, which
25 is obviously the ultimate theory of defense, is that the

1 defendant should be acquitted.

2 THE COURT: All right. The government didn't
3 object to it. I'll leave it in.

4 MS. BAKSHI: Your Honor, if we may, that was an
5 oversight on our part. We object to that language based
6 upon the reasoning -- we apologize. We should have caught
7 that.

8 But it is repetitive, and it will be confusing to the
9 jury. Her Honor is going to read a number of instructions
10 that will clarify what their burden is. For the defense to
11 provide a very watered down, overly simplistic view would
12 certainly confuse them and undo much of the instructional
13 value that the rest of the instructions on the burden of
14 proof would offer.

15 MS. HODDE: Your Honor, I respectfully disagree
16 with the government on this point. This is a theory of
17 defense instruction.

18 The government is certainly -- I expect they will get
19 up in closing and beat the podium about how they have proven
20 each and every element including the knowledge element
21 beyond a reasonable doubt.

22 THE COURT: It's too simplified. It's going to
23 be very confusing. They will just look at this, and they
24 will say, well, that's all we need to worry about, let's
25 throw out everything else.

1 MS. HODDE: Your Honor, I think that -- I don't
2 think it's too simple. I think that it is a sentence that
3 is specifically targeting the theory of defense and really
4 does connect the dots for the jury between -- I don't know,
5 maybe we need to reword it so we say refer back to the
6 beyond a reasonable doubt instruction on page 6, or wherever
7 that is in the overall instructions, but the bottom line is
8 this is what the theory of defense is, is that either the
9 performer is over the age of 18 or Mr. Richards believed the
10 performer was over the age of 18.

11 And the reality is if the jury credits either of
12 those representations, then they should find Mr. Richards
13 not guilty, and that really needs to be conveyed in this
14 instruction.

15 That's the whole purpose of the theory of defense
16 instruction, is to lay that out for them in a way that they
17 can understand. And I think this makes -- this paragraph
18 does make sense in the overall scheme, and I think that the
19 instructions as a whole clearly set forth all of the
20 elements.

21 We are not -- this isn't a nullification request, you
22 know, disregard the other elements. I think the bottom line
23 is the government may very well have proven a lot of the
24 other elements. This is the element that is in issue for
25 the defense.

1 THE COURT: It is certainly true that if -- for
2 every charge including the record-keeping charge, if they
3 find that the performers were over 18 or that Richards, the
4 defendant, did not know that they were under 18, I mean,
5 that's an essential element for every single charge.

6 MS. BAKSHI: Your Honor, if I may be heard? You
7 inquired about the record-keeping requirements. The
8 record-keeping requirements -- it doesn't matter if the
9 performer is 17 or 70, that every single performer who's
10 engaged in sexually explicit conduct has to have -- the
11 primary producer has to have the records on file.

12 The whole point of that is that the FBI can inspect
13 and make sure these are adult performers. And the secondary
14 producer, also known as the distributor, has to have an
15 accurate assessment of where those records are kept.

16 It's absolutely not required that the performer be a
17 minor or, of course, then that the defendant know that they
18 are a minor. It's absolutely irrelevant to the
19 record-keeping requirements.

20 MS. HODDE: Your Honor, I think that we can
21 consolidate these two paragraphs now that the court has
22 stricken the "however" sentence.

23 And I think we can say that it is a defense to the
24 record-keeping requirement that the defendant basically
25 complied with record-keeping; that he did his best, that he

1 made his best efforts at complying. And that's our defense
2 on record-keeping.

3 Then on the remaining counts in the indictment, I
4 agree with Ms. Bakshi. It's not -- the record-keeping
5 requirement doesn't go with child or adult pornography.

6 THE COURT: Well, then you have overstated it
7 when you say then you must acquit Mr. Richards.

8 MS. HODDE: Yes, and maybe I have overstated it.
9 When I wrote these paragraphs, I had assumed -- basically
10 the paragraph that is above it is the defense to the
11 record-keeping. The final paragraph is the defense to all
12 the child pornography specific allegations.

13 And so maybe we need to add some language that says
14 on the matters of possessing, producing, advertising,
15 distributing, conspiring to do the above, unless you find
16 beyond a reasonable doubt, maybe we need to add some
17 prefatory language to clarify that.

18 THE COURT: I'm going to leave it in, but you
19 need to clarify which ones it applies to. I'm leaving it
20 in.

21 The government has gone to the effort to prepare a
22 five page response to your theory of defense and didn't
23 mention this paragraph. It was the court that brought this
24 up as a bit of a concern. You have convinced me it should
25 stay in, so I want you all to work on the language of it so

1 it's accurate.

2 And you can fold in the one sentence left in the
3 penultimate paragraph, if you want to, and make that one
4 paragraph.

5 Then you are going to work on the language at the
6 bottom of page 3 about the Justinsfriends and -- that, and
7 then get that to me as soon as possible. And you can give
8 it to me in handwritten form.

9 If it's still contested, I'll come in and rule, but
10 maybe with these rulings you can come up with some language.

11 All right. I'm going to move on to the next. I
12 think that meets all of the questions on that. Moving on to
13 the next issue, the accomplice instruction, I took that out
14 because it related specifically to Justin Berry only.
15 Justin Berry did not testify.

16 The government's position is that basically the
17 defense has never maintained that [REDACTED] was an accomplice
18 and that this instruction was never proposed to be used just
19 for Patrick [REDACTED] and that it doesn't apply. So what's
20 the defense argument on this one?

21 MS. HODDE: Your Honor, my argument is really
22 simple. And I don't have -- there's been so much work and
23 so much exhaustion in this case, I'm not going to argue with
24 Ms. Daughtrey about the representations on the accomplice
25 instruction.

1 I know we discussed it in terms of Justin Berry
2 because he was the obvious accomplice that was going to be
3 coming to testify at least from the defense perspective, so
4 I don't have clear recollection one way or another. And I
5 trust Ms. Daughtrey on that representation.

6 I do want to argue for the record why the defense has
7 suggested an accomplice instruction is appropriate in this
8 case.

9 The court has heard testimony from Mr. [REDACTED] on
10 cross by Mr. Strianse that there was a time period when he
11 was over the age of 18. Obviously, that would have begun on
12 July 30, 2003 and continued until Mr. [REDACTED] ceased his
13 involvement with Caseyandkylescondo, which actually
14 extended, I think, into either March or April of 2004.

15 So there is testimony in the record that there were
16 eight or nine months in which Mr. [REDACTED] was actively
17 involved in what the government characterizes as a child
18 pornography web site.

19 Clearly, if you buy the government's theory, then Mr.
20 [REDACTED] knew that he was underage in the photos that were
21 being posted. Mistake of law is obviously no defense to the
22 charges, so the fact that Mr. [REDACTED] may have been --
23 obviously his theory is that Mr. Richards convinced him in
24 some way that posting underage images after you -- underage
25 images after you turned 18 is some -- in some way okay.

1 There's no suggestion that Mr. ██████ did anything
2 after he turned 18 for those eight months except for
3 participate and actively gain profit from
4 Caseyandkylescondo.

5 So it seems as though there is a time frame there
6 when he is an adult and he would have been recognized under
7 the law as an accomplice if you buy into the fact that
8 Caseyandkylescondo is a child pornography web site. And
9 that's really my argument on that.

10 THE COURT: Okay.

11 MS. DAUGHTREY: Your Honor, I don't recall that
12 Mr. ██████ testified about having any operational aspect
13 of this Caseyandkylescondo. He specifically stated on
14 cross-examination that he did not create web pages, although
15 the defense has tried to put forth that he was somehow
16 equally active in all of this.

17 He certainly was involved in the production of adult
18 pornography after he turned 18, but that's not a criminal
19 matter in this case.

20 And there is no proof in this record to support
21 anything that the defense says about Mr. ██████ being the
22 one who was operating, managing, or in any way doing
23 anything with this particular site. I think it's wholly
24 inappropriate.

25 The government certainly has not presented its case

1 to deal with this particular theory that all of a sudden the
2 government is hearing for the first time and respectfully
3 submits that the Patrick [REDACTED] is primarily a victim in
4 this case and certainly not an accomplice to running
5 CaseysCondo or Caseyandkylescondo.

6 THE COURT: I'm not going to give this one. I
7 don't think there's sufficient evidence in the record to
8 support this instruction.

9 MS. HODDE: Your Honor, for the record, I did
10 want to address one thing that Ms. Daughtrey just said about
11 Mr. [REDACTED] access to these computers.

12 We did hear on Friday during the videotaping and
13 again today in court that Mr. [REDACTED] claimed that those
14 Iceland photos or what he characterizes as Iceland photos
15 came from his accessing Mr. Richards' servers and
16 downloading them.

17 So on some level this man acknowledged on the record
18 in this case that he has accessed and has had some control,
19 obviously, of these computers.

20 So I respectfully disagree with the court. And for
21 the record, we do maintain an objection on this instruction.

22 THE COURT: Okay. All right. Then the next
23 one, the summary exhibits, there are some summaries in
24 evidence and some not in evidence, and so that's why I
25 thought we ought to have both instructions.

1 MS. HODDE: Your Honor, I apologize. I had
2 forgotten about the summaries that were in evidence.

3 THE COURT: Okay.

4 MS. HODDE: I think that -- I don't know how
5 exactly we accomplished this. I know the big poster boards
6 that have been up throughout the trial are not in evidence,
7 and those are not going back to the jury.

8 I think that there were some exhibits that Mr.
9 Fottrell put together that were summary style and those are
10 in evidence and will go back.

11 THE COURT: I'll just give both instructions,
12 and I'll make it clear in my delivery some things came into
13 evidence and some did not.

14 MS. HODDE: I apologize. I had just forgotten
15 about those.

16 THE COURT: All right. Now -- and then on the
17 on or about, the government's -- not on or about, on the
18 fact that the statute uses "or", the indictment charges
19 "and", the government has filed an extensive brief on this
20 issue.

21 And it was filed on Friday, and I have received
22 nothing further from the defense, so I presume the defense
23 has nothing to counter.

24 MS. HODDE: Your Honor, we have no objection to
25 this.

1 THE COURT: Okay. You have no objection to this
2 additional instruction?

3 MS. HODDE: The instruction.

4 THE COURT: Is the instruction okay with the
5 government then, use of "and" in the indictment?

6 MS. DAUGHTREY: Yes, Your Honor.

7 THE COURT: All right. Let's discuss where
8 we're going to put that. It looks to me perhaps between
9 pages 15 and 16 where you talk about separate
10 considerations, single defendant charged with multiple
11 crimes; either before or after that one seems to me the
12 appropriate place to put that.

13 MS. HODDE: We have no objection to that
14 placement.

15 THE COURT: All right. You think before or
16 after? Does the government have a preference? I think
17 maybe between 15 and 16.

18 MS. DAUGHTREY: That would be fine, Your Honor.

19 THE COURT: Is that all right? Okay. And then
20 the theory of defense usually goes after, doesn't it, after
21 all the elements, all the -- how about right after page 53,
22 defendant's testimony?

23 MS. DAUGHTREY: No objection from the
24 government.

25 THE COURT: Or before defendant's testimony?

1 MS. HODDE: Your Honor, we have no objection to
2 it coming -- we believe it should come right after the
3 defendant's testimony instruction.

4 THE COURT: Is that all right with the
5 government?

6 MS. DAUGHTREY: Yes.

7 THE COURT: All right.

8 MS. HODDE: Your Honor, there's one other thing
9 that just caught my eye, on page 52, the dates on or about,
10 seems logical that would be moved forward in basically the
11 same place that we just put the "and", "or" instruction.

12 THE COURT: Yeah, I agree. Is that all right
13 with the government?

14 MS. DAUGHTREY: Yes, that's fine.

15 THE COURT: We'll put it right after the use of
16 "and", we'll put this one.

17 All right. And let me give you a few minutes to come
18 up with the revised wording on the defense theory, and just
19 give it to Ms. Briggs-Jones if you can agree on it; if you
20 cannot, I will come back in and resolve your differences.
21 Okay?

22 MS. HODDE: Thank you, Your Honor.

23 THE COURT: Oh, yeah, you also had some kind of
24 an issue on the use of the poster board in the closing or
25 something, Ms. Hodde, did you?

1 MS. HODDE: I did.

2 THE COURT: Who had that issue?

3 MS. HODDE: I did want to raise that issue. I
4 have actually not finished reviewing all the poster board
5 exhibits.

6 There's one, though, that I have seen that I -- based
7 on looking at the exhibits, it's clear that the government
8 is going to be posting basically a synopsis of the elements,
9 I guess, in taking the jury through that.

10 I don't think that's appropriate, first of all, as a
11 general policy to have -- obviously, I think it's
12 appropriate to refer to what the court is going to instruct,
13 but to rephrase the elements and then put it on poster board
14 and try to simplify the elements for the jury's
15 consideration in closing, I don't really think that is
16 appropriate. So I --

17 THE COURT: Do you think they are inaccurately
18 phrased? Is that what you're saying?

19 MS. HODDE: One of them absolutely is, and it's
20 the advertising poster board. And we'll have to get it down
21 and look at the together. But it is missing the knowledge
22 element of one of the -- it's missing the word "knowledge"
23 in the summary of elements from one of the elements.

24 If the court is to compare the exhibit that Ms.
25 Daughtrey is carrying on advertising, the second element,

1 offering child pornography, with the instructions on
2 advertising, and I'm looking for it now.

3 THE COURT: It's on page 33. I'm looking at it.

4 MS. HODDE: If the court takes a look at the
5 second element on page 33, the notice or advertisement
6 knowingly sought or offered, the word "knowingly" needs to
7 be on that instruction, that second element, in order to be
8 accurate.

9 THE COURT: That's a little simplified for my
10 taste.

11 MS. DAUGHTREY: Your Honor, I would be glad to
12 add the "knowingly" back in. Are you saying the whole thing
13 is too simplified?

14 THE COURT: Well, is your primary objection the
15 knowingly?

16 MS. HODDE: That's my specific inaccuracy
17 objection to the advertising poster board, but if the court
18 looks at all the poster boards, the court will see that it's
19 a real over-simplification of the elements generally.

20 And I just don't think it's appropriate for the
21 court -- obviously the court is going to give the jury the
22 charge in this case, and it just seems improper for the
23 government to put on poster board a simplified version of
24 elements. I think we run a real risk here.

25 I think it's wholly appropriate to refer to the

1 court's instructions in closing and say the court is going
2 to charge you on the elements of advertising on page 33, and
3 you will have to look at those elements closely and then
4 argue from that. But I don't think these poster boards are
5 accurate, and it would be improper.

6 THE COURT: That one looks way too simplified
7 for my taste.

8 MS. DAUGHTREY: Your Honor, the reason that I
9 wanted to do this, and I would be glad to change those, but
10 I'm trying to make sure that the jury can read what the
11 elements are because they have expressed a confusion in this
12 case.

13 And I think it's imperative that I be able to talk to
14 them about the elements and talk them through the elements
15 of the crime -- crimes in this case.

16 I certainly would be willing to redo these. I was
17 trying to cut some of the wording out and do it in such a
18 way that the defense wouldn't object, so that the jury -- to
19 simplify it for the jurors because there are so many counts
20 and so many different charges in this particular case.

21 THE COURT: What about -- and I don't usually
22 allow this but I hear both sides here very clearly, and this
23 is a very complex case. What about simply putting on the
24 projector the page from the instructions that has the actual
25 elements in all their complexities?

1 MS. DAUGHTREY: Your Honor, the reason I wanted
2 to do this is because in my closing, I'm going to want to
3 talk to them about each of these elements one by one and how
4 it is that the proof is going to be supporting those
5 elements.

6 The proof is going to be coming through -- and I'm
7 trying to do everything on Power Point to avoid Ms.
8 Briggs-Jones having to constantly stand up and press
9 something.

10 I don't have that in my Power Point at this point,
11 and I want those elements to be up while I'm showing --

12 THE COURT: Why don't you blow up these elements
13 on a chart?

14 MS. DAUGHTREY: I can do that. It may take me
15 longer than 50 minutes in order to do that. But with
16 court's permission, I would be happy to.

17 THE COURT: That would be my preference.

18 MS. HODDE: And just for the record, it would
19 seem appropriate if the court were going to do something
20 like that and talk about the elements, that the court use
21 the exact language from the instruction, use the -- you
22 know.

23 THE COURT: That's what I'm saying, blow up the
24 exact wording from the instruction as your chart.

25 MS. DAUGHTREY: Is there any chance that I could

1 talk with the defense and maybe cut out some of the words
2 like, for example, shortening advertisement to ad doesn't
3 seem like it is going to make a big difference.

4 THE COURT: If you can get some agreement,
5 that's fine.

6 MS. DAUGHTREY: Okay.

7 THE COURT: But if you can't, then it's going to
8 have to be the exact elements that are in the instruction.

9 MS. DAUGHTREY: It's just going to be very
10 difficult to blow up for them to be able to read that large
11 wording, which is what I was trying to avoid.

12 THE COURT: I know. I know. Okay. I'm going
13 to take a short recess. And you have this equipment in your
14 office, I presume?

15 MS. DAUGHTREY: Yes, it's just the same computer
16 that we have been using that we'll need to hook up, and
17 we'll be down here about ten minutes before the jury comes
18 back out.

19 THE COURT: Yeah.

20 MS. DAUGHTREY: If I do reprint these, I'm not
21 sure --

22 THE COURT: Why don't you we say you all come
23 back at quarter until one?

24 MS. DAUGHTREY: Okay.

25 THE COURT: Quarter until one.

1 MS. DAUGHTREY: Okay.

2 THE COURT: But right now, you need to do the
3 theory of defense and call me back in or tell her that you
4 have -- or just hand her what you have agreed to on the two
5 issues there. Okay. All right. We are in recess.

6 (Break.)

7 THE COURT: Okay. Where are we on the theory of
8 defense?

9 MS. HODDE: Not terribly surprisingly, we were
10 unable to agree.

11 THE COURT: Okay.

12 MS. HODDE: I do have some suggestions for the
13 court, though.

14 THE COURT: Okay.

15 MS. HODDE: I would suggest -- I think we were
16 in agreement that the first sentence is correct with the
17 subtraction of "in good faith".

18 THE COURT: Yeah, I made it: Mr. Richards made
19 an effort to comply. Is that all right?

20 MS. HODDE: I'm sorry. I must have --

21 THE COURT: Are you on the second to the last
22 paragraph about the record-keeping?

23 MS. HODDE: No. Actually, I had a suggested
24 language for that. I'm on the first page.

25 THE COURT: At the bottom of 3?

1 MS. HODDE: Yes. At bottom of three: In regard
2 to the performers on Justinsfriends.com and
3 Justinsfriends.net web sites, we would strike the words "Mr.
4 Richards was assured by".

5 THE COURT: Okay.

6 MS. HODDE: And we would start with, "Justin
7 Berry, the original owner of the site", strike the word
8 "that", insert the word "portrayed" all performers, strike
9 the word "were", and then insert "as being".

10 So it would be Justin Berry, the original owner of
11 the site portrayed all performers as being over the age of
12 18.

13 THE COURT: Portrayed or how about represented?

14 MS. HODDE: That would be fine, just something
15 that doesn't say -- obviously that gives you the flexibility
16 we are talking about, that has that kind of tacit
17 undercurrent.

18 THE COURT: It's -- really the representation is
19 in this biography section of the web site, so you can't say
20 both things, that he portrayed it and then this was
21 confirmed, because if you use portray or represent, then
22 that indicates that he said something in addition to the
23 representations made in the biography section.

24 And the only proof has been that he relied on what
25 was posted on the web site.

1 MS. HODDE: Well, we could either consolidate --
2 that's why we didn't -- we had originally modified this
3 first sentence to add the biography section language and
4 consolidate the first two sentences.

5 What we could do is say, Justin Berry, the original
6 owner of the site, represented all performers as being over
7 the age of 18.

8 THE COURT: In the biography section of the web
9 site?

10 MS. HODDE: Yeah, through the biography section
11 of the web site or in the biography section of the web site.

12 THE COURT: Justin Berry, the original owner of
13 the site, represented that all performers were over the age
14 of 18 in the biography section of the web site, period.
15 Because you don't need which indicated that all performers
16 -- I mean, that's duplicative.

17 MS. BAKSHI: Your Honor, that language is
18 certainly acceptable except for the reference to "all". The
19 evidence relates to a single person, Taylor. And to suggest
20 that there's more evidence or there's more there is
21 inconsistent with the evidence.

22 And in particular, as I mentioned earlier, the
23 government introduced evidence that was not challenged that
24 the video, it's JF_fucking appears on the Justinsfriends web
25 site that depicts Mr. Richards and Mr. [REDACTED] engaged in

1 sexually explicit conduct.

2 There was an issue about whether or not that was in
3 Iceland or taken later, what have you. But there was not an
4 issue about whether or not that actually depicts Mr.
5 Richards and Mr. [REDACTED] on the Justinsfriends site.

6 And so clearly there's no information about Mr.
7 [REDACTED] in that section. So, again, it's overstating it.
8 It's one bio. That's --

9 THE COURT: Okay.

10 MS. HODDE: Your Honor, the point really is that
11 when Mr. Richards receives the site from Justin Berry, the
12 biography section has already been created, been created by
13 Mr. Berry, and its says all performers are over age 18.

14 No matter which bio you click on, you get that all of
15 them are over the age of 18. Taylor's bio, in particular,
16 is the one obviously at issue in this case, but it's the
17 entire biography section that helped form and concrete in
18 Mr. Richards mind that these performers were all over the
19 age of 18.

20 MS. BAKSHI: If I may on that, that's factually
21 inaccurate. Justin Berry did not create the 2257 notice
22 that you just quoted, and that's definitely not in evidence.

23 Mr. Richards created that 2257 notice. He testified
24 that he said that he had a typo in it, said it's no be
25 announced, he testified he wrote that 2257 as a placeholder

1 for Greg Mitchell.

2 So it's not the case that Mr. Berry gave sort of a
3 catch-all assurance in the form of 2257, the only evidence
4 related to Taylor.

5 MS. HODDE: I didn't use the word 2257. I'm not
6 sure where she's getting --

7 MS. BAKSHI: I may have misheard you, but I
8 thought you were quoting when you said all performers.
9 Where is the evidence that says all performers if it's not
10 in 2257?

11 THE COURT: Is that in evidence, the biography
12 sections?

13 MS. HODDE: I think it's in evidence, the
14 biography sections. I put it up on the big screen. I asked
15 the expert about it. I talked about the biography section.
16 I talked about do you see the biography section, you see
17 these five performers, you see you can click on Taylor, and
18 if you click on Taylor, you go to this page. I introduced
19 it into evidence. I think that's clearly in the record.

20 I know the government would like for the defense not
21 to have a theory of defense instruction, but, you know, I
22 think the government is being a little nitpicky.

23 THE COURT: Let's stay focused on where we are.
24 I have Taylor's bio on the Justinsfriends web site as in
25 evidence.

1 MS. HODDE: I think I entered that as defense
2 Exhibit 1 or 2.

3 THE COURT: Well, actually, it looks like you
4 have it twice. I have it as 1, and I have it as 17.

5 MS. HODDE: The first one is the corrected,
6 X'd-out version, where when Taylor was interviewed, he said
7 this isn't the biography that I created, Justin Berry
8 modified my biography.

9 And he indicated by putting X's on the biography
10 which of the lines had been changed by Mr. Berry. And then
11 the later exhibits, Exhibit 6, or whatever it was, is the
12 actual cleaned-up biography that would have appeared on the
13 web site.

14 MS. BAKSHI: Your Honor, if I may, I'm looking
15 at Government Exhibit 21, which is the page of the
16 Justinsfriends web site that we introduced, and I know it's
17 difficult to see, if I could come a little closer, and
18 referring to these images, there are so many children on the
19 Justin Berry -- so many performers, most of whom we don't
20 know who they are.

21 So to represent that by using a single example of
22 Taylor that all of the performers were represented as being
23 18 is inaccurate. I think that's irrelevant to this case.
24 We don't know whose those people are, so we haven't charged
25 any images associated with anybody except for Taylor and

1 Patrick [REDACTED] on the Justinsfriends sites.

2 But I do think that to say they -- to refer to it as
3 all these performers having introduced these exhibits is a
4 pretty gross overstatement of what Justin Berry, if
5 anything, assured them via Taylor. It's a pretty grand
6 leap.

7 THE COURT: The question is did something come
8 into evidence from the Justinsfriends web site created by
9 Justin Berry that says all the performers on this web site
10 are over 18. That's the question.

11 And I don't have a clear memory of that. You are
12 saying, yes, it did. You are saying, no, it didn't. So
13 somebody find it for me.

14 MS. HODDE: Your Honor, it was in my
15 cross-examination, I think, of Mr. Fottrell when I took him
16 through that particular --

17 THE COURT: Where is it? Where is it in the
18 evidence, what exhibit?

19 MS. HODDE: Your Honor, it's Government Exhibit
20 61.

21 THE COURT: Let me see that, please. It's in
22 the big binder?

23 MS. HODDE: It is. And it is the second to last
24 page of 61. And, Your Honor, as the court may recall, this
25 is the exhibit that I put on the screen and asked -- now I'm

1 refreshing my own recollection, I asked the Special Agent
2 Brooke Donahue about this exhibit.

3 THE COURT: I don't see what you are saying.

4 MS. HODDE: It's the second to last page at the
5 top of it, it says Justinsfriends.com archived videos --

6 THE COURT: Yeah.

7 MS. HODDE: -- on 1 of 1, and it's got the list
8 of names, Justin, Brandon, Taylor, James, Tim, other
9 friends.

10 THE COURT: Yeah.

11 MS. HODDE: And I elicited the testimony from
12 the case agent where I basically had him say if you click on
13 Justin, that drops you over to the Justin biography; if you
14 click on Tay, it takes you magically over to the Tay
15 biography.

16 And then in my cross-examination, I went ahead and
17 showed him the Tay biography and asked him about it.

18 THE COURT: So what's your rejoinder,
19 Ms. Bakshi?

20 MS. BAKSHI: It's pretty much the same. We have
21 introduced uncontroverted evidence that Patrick [REDACTED]
22 appears in that video that's on the front page of
23 Government's Exhibit -- I believe it's 6 -- excuse me. I
24 think it's the one I just showed the court, and there's no
25 reference whatsoever to Patrick [REDACTED]

1 So it's inaccurate and very misleading for the
2 defense theory to say it's all of the performers that appear
3 on that site.

4 I mean, I certainly would have no objection to naming
5 Taylor or Justin or what they actually talked about, but
6 it's not appropriate at all to add all of the performers
7 when they have clearly neglected a very, very important one.

8 THE COURT: Now, this is the expert you asked
9 this question of?

10 MS. HODDE: Your Honor, I think it may have
11 actually been the case agent, Brooke Donahue.

12 THE COURT: I'm not finding it in Brooke
13 Donahue's.

14 MS. HODDE: I'll have to look. And,
15 unfortunately, my notes on my cross-examination of witnesses
16 are not going to really reflect because I wasn't note-taking
17 while I was asking.

18 THE COURT: Right, right.

19 MS. HODDE: Your Honor, I have a very distinct
20 recollection, though, of taking --

21 THE COURT: Somebody.

22 MS. HODDE: -- somebody through this exhibit and
23 entering that Taylor biography.

24 MS. BAKSHI: Sorry. There's no dispute. You
25 definitely entered the Taylor biography, and I have no

1 problem with the notion of referring to the Taylor
2 biography.

3 It's when you say that all of the performers of the
4 Justinsfriends site, which includes Patrick [REDACTED] that I
5 have the objection.

6 And there's no reference to Patrick [REDACTED] even on
7 the exhibit you mentioned. Patrick [REDACTED] is on that
8 site. There's -- the defendant is saying that it wasn't at
9 the time and place Patrick [REDACTED] says it was; namely, in
10 Iceland when he was 17.

11 But there's no -- there's been no contradiction to
12 the testimony that it is indeed the defendant and Patrick

13 [REDACTED]
14 So this exhibit, even if you were able to find
15 something that says that he said everyone, I don't think
16 that's the case, but even if he had said everyone on this
17 page, it wouldn't apply to Justin -- excuse me, wouldn't
18 apply to Patrick [REDACTED] or the defendant.

19 THE COURT: Well, did Justin Berry put the
20 pictures of Patrick [REDACTED] on the Justinsfriends web site?

21 MS. HODDE: No, Your Honor. The history was
22 this. It was Justinsfriends.com --

23 THE COURT: Yeah.

24 MS. HODDE: -- and Justin Berry owned and
25 operated it with Greg Mitchell.

1 THE COURT: Right.

2 MS. HODDE: He created what you see in Exhibit
3 61; that is his work. Then at some point in July of 2005 --

4 THE COURT: Defendant took it over, then he put
5 those on there?

6 MS. HODDE: -- it moves to Justinsfriends.net,
7 moves to the LA server. And then at that point in time, Mr.
8 Richards is the one adding content.

9 Now, he added almost no content except for, I think,
10 that the government's going to basically put into the record
11 that -- I think that JF_fucking.wmv may have been added to
12 the site.

13 But there were almost no alterations once the
14 defendant took the site over, the point being that when Mr.
15 Richards acquired the site, it was represented to him as an
16 adult site by Mr. Berry through the content that Mr. Berry
17 created on Justinsfriends.com.

18 THE COURT: Well, then would -- wouldn't it be
19 accurate to say in regard to the performers on the
20 Justinsfriends.com web site, Justin Berry, the original
21 owner of this site, represented that all performers were
22 over the age of 18 in the biography section of the web site;
23 isn't that accurate, Ms. Bakshi?

24 MS. BAKSHI: I think that that -- I don't know
25 if that's factually supported.

1 It is the case that the defendant was the operator of
2 Justinsfriends.net. I don't know that it's factually
3 supported that he had no role in Justinsfriends.com.

4 I think what is supported is the particular
5 performers to which -- that's the only thing I can say
6 unequivocally, that I think any of us can say unequivocally,
7 is that he named particular performers, including Taylor and
8 he may have meant other than Colin as well. Taylor and
9 Justin, Justin is irrelevant because we haven't introduced
10 any evidence of Justin Berry as a minor.

11 But I believe the testimony was -- the testimony and
12 exhibits were only about Taylor, and I don't know that it's
13 factually accurate. I would have to check with the forensic
14 expert on that.

15 THE COURT: Well, then, you know, you can argue
16 against it if you don't think it's factually accurate. What
17 we are talking about here is the defense theory and if it
18 has some support in the record, and it seems to me it does
19 have support in the record, then they are entitled to have
20 this.

21 MS. BAKSHI: That may be confusing. We'll
22 certainly be arguing this, but it may be confusing to people
23 who are not very familiar with web sites. The distinction
24 on Justinsfriends.com unless it's contrasted to
25 Justinsfriends.net, might be lost on the --

1 THE COURT: Well, I'm reading from the
2 commentary in the Sixth Circuit instruction handbook under
3 Defense Theory: Although a jury instruction should not be
4 given if it lacks evidentiary support or is based upon mere
5 suspicion or speculation. If there is even weak supporting
6 evidence a trial court commits reversible error in a
7 criminal case when it fails to give an adequate presentation
8 of a theory of defense.

9 And I think that there is adequate support in the
10 record for this sentence as we have reworded it, and it
11 certainly had been presented as a defense theory.

12 So this sentence is going to read: In regard to the
13 performers on the Justins.com web site, comma, Justin Berry,
14 the original owner of the site, comma, represented that all
15 performers were over the age of 18 in the biography section
16 of the web site. Okay?

17 MS. HODDE: Yes.

18 THE COURT: All right.

19 MS. HODDE: Your Honor, the next modification
20 was in the second to last paragraph on page 4 --

21 THE COURT: Yes.

22 MS. HODDE: -- instead of a good faith effort --

23 THE COURT: Yes, yes.

24 MS. HODDE: -- Mr. Strianse and I had suggested
25 made an honest and sincere effort to comply; that was our

1 suggested change in language. I can't remember -- I know
2 the court suggested something earlier.

3 THE COURT: I just took out good faith and said
4 Mr. Richards made an effort to comply with the
5 record-keeping requirements. Honest and sincere sounds
6 pretty close to good faith.

7 MS. HODDE: It's our theory that Mr. Richards
8 did make a sincere effort, and I think that is evidenced in
9 the record.

10 I think that the court could take a look at a number
11 of things to look at the sincere effort that he made,
12 including the phone call he made on September 13 offering
13 his name and contact information to the FBI and saying
14 please contact me if you have any questions.

15 THE COURT: All right. I'm going to put sincere
16 but not honest and sincere.

17 MR. STRIANSE: Your Honor, you're not suggesting
18 we can't use normal terms like that in closing argument, are
19 you? I would be able to argue to the jury that he made an
20 honest and sincere effort?

21 THE COURT: Yes.

22 MR. STRIANSE: Okay.

23 MS. BAKSHI: I would ask that you stay away from
24 good faith.

25 THE COURT: I want you to stay away from good

1 faith.

2 MR. STRIANSE: I won't use the terms good faith.

3 THE COURT: All right.

4 MS. HODDE: Your Honor, in the last paragraph,
5 we're going to strike the "however" sentence. So I would
6 suggest that these two paragraphs be consolidated into one,
7 and that in the last sentence here, the last paragraph, we
8 can just add the words after then you must acquit Mr.
9 Richards of possession, distribution, advertising,
10 production and conspiracy to distribute or advertise child
11 pornography. So that it has that modifier.

12 THE COURT: Of possession?

13 MS. HODDE: Distribution, advertising,
14 production and conspiracy to distribute or advertise child
15 pornography.

16 THE COURT: And you're proposing to make that --
17 put those two paragraphs together, that first sentence?

18 MS. HODDE: We could do it either way. I just
19 thought that the court might want to put them together.
20 Obviously, the sentence, as evidenced by defense Exhibit 6
21 is our ultimate defense to record-keeping.

22 And then the last sentence is our ultimate defense to
23 the balance of the indictment.

24 THE COURT: I think it makes more sense to put
25 that paragraph that starts, unless you find beyond a

1 reasonable doubt before the record-keeping because the
2 record-keeping, I think, is the last instruction on the
3 substantive offenses.

4 MS. HODDE: It is.

5 THE COURT: So put that paragraph first and then
6 put the -- put this, the record-keeping thing, at the end,
7 and I think we need to add, the defendant maintains that as
8 evidenced by defense Exhibit 6.

9 MS. HODDE: Could we just say Mr. Richards?

10 THE COURT: Yes. Mr. Richards maintains that,
11 comma, as evidenced by defense Exhibit 6, Mr. Richards, he,
12 he, made a sincere effort to comply with the record-keeping
13 requirements, and redact the last paragraph.

14 MS. HODDE: If we reverse those two sentences,
15 and I would suggest that we need to add some sort of
16 follow-up or conclusory sentence that says something to the
17 effect of, if you credit Mr. Richards' representation on
18 record-keeping, then you must acquit the defendant.

19 THE COURT: Sincere effort is not enough.

20 MS. BAKSHI: That's right. Also --

21 THE COURT: We could say, as evidenced -- Mr.
22 Richards maintains that as evidenced by Exhibit 6, he made a
23 sincere effort to comply with the record-keeping
24 requirements and should be acquitted on that charge as well.

25 MS. HODDE: Okay.

1 MS. BAKSHI: How is Your Honor -- if I may, I
2 mean, two problems. One is a thought that I was hoping that
3 the entire sentence would be struck as we talked about good
4 faith, so I didn't address this separately but defense
5 Exhibit 6 is actually unrelated to the charges of
6 record-keeping requirements.

7 The record-keeping requirement charges pertain to
8 Penisclub.com and Justinsfriends.com, and
9 Justinsfriends.net, and defense Exhibit 6 applies to two
10 different sites, two different sites that are not at issue.

11 THE COURT: Caseyscondo and --

12 MS. BAKSHI: Caseyandkylescondo, one we lost on
13 Rule 29 and one we never charged. So I would have addressed
14 that separately except I thought the whole sentence might be
15 struck.

16 My inclination is that given that that -- that there
17 is no good faith exception, this whole sentence is basically
18 inviting them to nullify.

19 THE COURT: Yeah, it doesn't -- there isn't a
20 good faith defense. I'm not sure we can give any part of
21 this sentence at this point.

22 MS. HODDE: Your Honor, may I have a moment? I
23 wanted to look at the elements again.

24 MS. BAKSHI: Your Honor, as she's doing that, I
25 also wanted to bring to the court's attention that at least

1 my recollection is unclear as to how we came out on the
2 government's objection to what we characterize as part D of
3 our argument, which relates to that first sentence, the
4 first full sentence on the top of page 4: It is Mr.
5 Richards' insistence that all the sexually explicit
6 Justinsfriends content was made, produced or otherwise
7 procured by Justin Berry and his partner Greg Mitchell for
8 the same reasons.

9 The Justinsfriends evidence shows that there was a
10 site that's not charged that has Mr. Richards kissing
11 somebody in a shower, and it also has the same video we have
12 been talking about that we allege was taken in Iceland. But
13 at least certainly it depicts Patrick [REDACTED] and Mr.
14 Richards.

15 THE COURT: Well, this is how I have it -- you
16 are talking about at the bottom of page 3?

17 MS. BAKSHI: It actually shows it again at the
18 top of page 4: It's Mr. Richards' insistence that all of
19 the sexually explicit Justinsfriends content was made,
20 produced or otherwise procured by Justin Berry and his
21 partner Greg Mitchell.

22 THE COURT: Although Mr. Richards spliced
23 together sections of Justin Berry's content to create a
24 preview movie, this request -- well, let's stick with what
25 we are on right now, then we'll go back to that.

1 Have you reviewed the elements of that, of the
2 record-keeping charge?

3 MS. HODDE: I have, Your Honor. I still think
4 it's important to convey this basic characterization of Mr.
5 Richards' intent, which is -- I think is important to the
6 defense regarding 2257 violations.

7 And I know the court struck our second sentence
8 because it's already covered in the instructions, but that's
9 certainly part of our defense on record-keeping, is that he
10 is technically a secondary producer.

11 MS. BAKSHI: Even as secondary producer, he
12 would have had to list the address. In his own testimony he
13 states -- actually, in response to Exhibit 6 when he's
14 talking about it, again that's uncharged, he actually says
15 that he didn't comply with it.

16 His testimony is, yes, I wrote that on top of the
17 page, records are keep here, and then he goes into a long
18 explanation of how he didn't keep the records there, and how
19 it's complicated, et cetera, but he says specifically that
20 the records are not there.

21 So I would challenge there's even a sincere effort,
22 but that's going to be your -- that's your theory, but that
23 said, it's not relevant to anything. The second sentence
24 was struck in part, I would imagine, because it's not a
25 complete statement of the law, and the first part is

1 irrelevant. There's no defense for sincerely trying.
2 Either you comply with all the regulations or you don't.

3 MS. HODDE: Your Honor, our defense on
4 record-keeping is in two parts. One is his honest intent to
5 comply, which has been touched upon in the record through
6 the testimony of witnesses in a number of different ways,
7 and his -- this secondary producer issue, which is touched
8 upon in another section of the instructions on 2257.

9 And I believe that if the jury were to credit either
10 of those representations, then it would be appropriate to
11 acquit Mr. Richards on those allegations. And I suggest
12 that that needs to be conveyed to them in the instruction.

13 MS. BAKSHI: Which element were you saying?

14 THE COURT: I don't find anywhere in this
15 instruction a -- something that would get him out of this
16 charge by honestly trying. I don't find a thing in this
17 instruction about that in terms of intent.

18 The defendant knowingly sold or produced, or
19 whatever, materials -- that the matter contained one or more
20 visual depictions of actual sexually explicit conduct, that
21 the matter or web site in which the matter was located did
22 not have a statement that listed the physical address where
23 the required individually identifiable records were located.
24 I don't find anything about intent that you're trying to
25 negate.

1 MS. HODDE: Well, Your Honor, I think that his
2 efforts to make sure that that statement is affixed is
3 certainly relevant to the inquiry that this jury is going to
4 have to figure out when it gets back in the deliberation
5 room.

6 I mean, either the statement was affixed or not, but
7 -- and that's the government's burden. But he made an
8 effort to affix a statement on each of these web sites, and
9 it may not be adequate in the sense -- in the way the
10 government measures it, but he did affix a statement on each
11 of those sites.

12 MS. BAKSHI: It doesn't list his physical
13 address. That's what the statute requires, affix a
14 statement with a physical address. They don't --

15 THE COURT: The statute requires a physical
16 address where records are located, not just a statement.

17 MS. HODDE: I understand, Your Honor, and I
18 think the answer to that is really two-fold. On
19 Justinsfriends, Justin Berry was the one supposed -- who was
20 supposed to insert -- it was his site at the time that Mr.
21 Richards did Mr. Berry the favor and crafted the 2257
22 statement, and it was Mr. Berry who was operating the site
23 and had the responsibility of filling that information in at
24 that point.

25 And on Penisclub, Mr. Richards had a link that said

1 2257 compliance statement, click here, and that compliance
2 was supposed to take you to Exhibit Number 6.

3 Now, whether that link -- whether the government has
4 demonstrated that that link did not sufficiently exist, I
5 think that's up in the air.

6 THE COURT: I'm going to leave in this language
7 as I have it. It's their theory. If it's wrong on the law,
8 you all are going to argue the law, and you can say this is
9 poppycock what he's saying, that's not a defense, and he's
10 coming in here and just trying to make something a defense
11 that's not a defense.

12 I mean, they are going to get the instructions, and
13 they are certainly not going to get anything that will lead
14 them to think that his trying is sufficient.

15 So I'm going to put as the last paragraph, Mr.
16 Richards maintains that as evidenced by defense Exhibit 6,
17 Caseyandkylescondo, blah, blah, he made a sincere effort to
18 comply with the record-keeping requirements and should be
19 acquitted on that charge as well. That's going to be that
20 last paragraph.

21 MS. HODDE: Thank you, Your Honor.

22 THE COURT: Now, what -- the point that you just
23 raised that you wanted to go back to --

24 MS. BAKSHI: Right, I didn't recall that we
25 resolved it. It's the top of page 4, first full sentence

1 that begins with, it's Mr. Richards' insistence.

2 THE COURT: That all of the sexually explicit
3 Justinsfriends content was made, produced or otherwise
4 procured by Justin Berry and his partner Greg Mitchell.
5 This would include -- since it doesn't say .com or .net, it
6 would include .net.

7 MS. HODDE: We can add .com, and that resolves
8 that definitively.

9 THE COURT: Does that solve the problem?

10 MS. BAKSHI: Yeah, I'm just seeing -- so if you
11 could just help me understand. So how would that paragraph
12 read then?

13 THE COURT: It starts with, in regard to the
14 performers on the Justinsfriends.com web site, comma, Justin
15 Berry, the original owner of the site, comma, represented
16 that all performers were over the age of 18 in the biography
17 section of the web site. It is Mr. Richards' insistence
18 that all of the sexually explicit Justinsfriends.com content
19 was made, produced or otherwise procured by Justin Berry and
20 his partner Greg Mitchell. The rest of it is all -- that
21 limits it to what he got from Justin Berry.

22 MS. BAKSHI: Okay. I can argue the rest.

23 THE COURT: Excuse me?

24 MS. BAKSHI: Yes.

25 THE COURT: Is that all right?

1 MS. BAKSHI: This is okay.

2 THE COURT: Okay. All right. We'll get this.
3 We'll add it between the old 53 and 54, which will now be
4 something else, and we will get this out to you.

5 And I hope everybody has time to eat something,
6 including the court, which hasn't eaten anything either. I
7 suspect we are really not going to be back here until 1:00.

8 MS. BAKSHI: Would it be all right to come back
9 down at 1:00 then?

10 THE COURT: Yes. Tell the jury it's going to be
11 1:00.

12 MS. HODDE: Thank you, Your Honor.

13 (Break.)

14 THE COURT: Here are the revised instructions,
15 and now I'm informed there need to be more revisions? What
16 are they?

17 MS. BAKSHI: Yes. Your Honor, as we were
18 preparing our final exhibits and checking everything, we
19 realized that we have made -- our records are not clear.

20 We thought we had at the beginning of the trial
21 dismissed Count Thirteen of the indictment, but even our
22 records are inconsistent on that. So it is our intention if
23 it's not already been dismissed that Count Thirteen of the
24 indictment be dismissed.

25 There's been no evidence on either side related to

1 that particular count, which is an advertising count of
2 Justin's -- from Caseyscondo to Justinsfriends using
3 Justin's Preview 2.

4 THE COURT: Count Thirteen. Well, so do the
5 instructions on the advertising count refer to Count
6 Thirteen?

7 MS. HODDE: Your Honor, page 33 of the
8 instructions sets forth the text of Count Thirteen.

9 THE COURT: Sure does.

10 MS. BAKSHI: Thank you. Thirty-two or 33?

11 THE COURT: Thirty-three, present 33.

12 MS. BAKSHI: Okay. Thank you.

13 THE COURT: Is it referred to anywhere else?

14 MS. BAKSHI: It probably would be if you're
15 going to list the number of advertising counts among the
16 other kinds of counts.

17 THE COURT: Give me a page, please.

18 MS. BAKSHI: Yes, Your Honor. I'm just looking
19 at the new revised version. It's going to be page 32 of the
20 new one, in the first line, seven counts.

21 THE COURT: Well, now we are left, really, with
22 four counts, aren't we?

23 MS. BAKSHI: That's right.

24 THE COURT: Defense agree?

25 MS. HODDE: Yes, Your Honor, four counts.

1 THE COURT: Why don't you all look over the
2 wording of the defense theory?

3 MS. HODDE: Your Honor, that's consistent with
4 what we discussed.

5 THE COURT: Okay.

6 MS. BAKSHI: On the second sentence, Mr.
7 Richards -- Mr. Richards was involved in the adult
8 pornography industry. I'm sorry --

9 THE COURT: What page are we on?

10 MS. BAKSHI: Page 55, and it's the second
11 sentence. I thought we discussed this in that this --
12 because his factual statement is incorrect, it was going to
13 be prefaced by, he believed. And that's why I said I
14 thought that was redundant, but I will leave that to the
15 defense's discretion if they wanted to repeat it.

16 THE COURT: Well, these are the changes that I
17 listed that we had talked about. I don't have any notes
18 that we took anything out of the first paragraph except for
19 good faith.

20 MS. BAKSHI: This was the point that I had
21 addressed in part B of the motion that I submitted this
22 morning and that we discussed.

23 And it was my understanding that because this -- the
24 statement that all performers on his adult web sites were
25 over the age of 18, it's factually incorrect, and is

1 undisputed that it's factually incorrect, particularly with
2 respect to Taylor, is the simplest example, and also there
3 hasn't been a factual dispute of [REDACTED] minority
4 status at the time of billing, my understanding was we were
5 going to add words to the effect of Mr. Richards was
6 involved in the adult pornography industry and he believed
7 all performers on his adult web sites were over the age of
8 18.

9 THE COURT: And he believed that all performers
10 on his adult web site?

11 MS. BAKSHI: Yes, Your Honor.

12 THE COURT: What's your response to that?

13 MS. HODDE: Your Honor, I don't have a problem
14 with that addition. I just would say for the record that
15 the Justinsfriends site is not listed and that's the --
16 seems to be the primary objection of the government. But I
17 don't have a problem with putting and he believed that all
18 performers.

19 I do need to check the governments -- there's one
20 other matter. I need to check the government's poster
21 boards that just came into the room.

22 THE COURT: Oh, okay.

23 MS. DAUGHTREY: There's a few more coming in
24 right now. I apologize for that. I think I asked for
25 reprints right as the woman who does them went to lunch, and

1 she didn't realize I would be making such a late request.

2 THE COURT: All right. I'm going to get these
3 three revisions.

4 And then in terms of the indictment, the third
5 superseding indictment that will be going to the jury, the
6 counts to be omitted are Eight, Ten, Fourteen, Seventeen?

7 MS. DAUGHTREY: And Thirteen.

8 THE COURT: Twenty-seven and Thirteen. Eight,
9 Ten, Thirteen, Fourteen, Seventeen and Twenty-Seven,
10 correct?

11 MS. BAKSHI: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. HODDE: Your Honor, may I ask the government
14 a question? Is this the chart that you're planning on using
15 in closing?

16 MS. DAUGHTREY: That's the exhibit that we have
17 had throughout.

18 THE COURT: You don't need to take this down.

19 (Counsel confer.)

20 THE COURT: Are the three pages of forfeiture
21 allegations to be left in the indictment that goes to the
22 jury?

23 MS. DAUGHTREY: I thought we had agreed that was
24 going to be bifurcated, and we do have proposed jury
25 instructions that we can submit to Your Honor. I had

1 prepared them and completely forgotten to submit them to
2 you.

3 THE COURT: All right. I'm going to take out
4 the forfeiture allegations, and we'll Xerox this so we do
5 have the signature of the foreperson and the U.S. Attorney,
6 okay?

7 MS. HODDE: Okay. The defense is in agreement
8 on that.

9 Your Honor, I do have one question. The court -- the
10 court will recall that during my cross-examination of one of
11 the witnesses, I put up the government's summary charts,
12 which the government has blown up, and proposes to use in
13 its closing.

14 And the court will recall one of my less savvy
15 cross-examination moments where I crossed through the
16 Colin.wmv --

17 THE COURT: Yes.

18 MS. HODDE: -- designation. The government
19 appears to have redacted that from this exhibit. And I'm
20 curious if the government is proposing substituting an
21 exhibit in the exhibit book that's going to be going back to
22 remove the Colin.wmv, or why we are using something that --

23 THE COURT: What exhibit is this?

24 MS. DAUGHTREY: This is a partial of an exhibit
25 that -- this is not an exhibit. It's just a partial of an

1 exhibit that we used.

2 And I am not proposing that we substitute it at this
3 point. It hasn't been done before the jury, and I believe
4 we objected to that before all of the proof had come in and
5 whether or not we knew what the status of Colin -- the
6 Colin.wmv was. I believe it might be Exhibit 64.

7 THE COURT: Yes, looks like 64. Well, I think
8 you are going to confuse people if you start putting up a
9 blow-up of something that's not an exhibit but that's almost
10 an exhibit.

11 MS. DAUGHTREY: Your Honor, it's merely to --
12 for us to talk about which of the images that our theory is
13 going on. I realize -- I'm not proposing that's an exhibit
14 or substitute exhibit. It's just listing --

15 THE COURT: Are you going to explain that -- the
16 omission of Colin wmv?

17 MS. DAUGHTREY: I don't think it's necessary. I
18 don't have to argue about proof that we don't intend to
19 present to the jury at this point.

20 I would be glad to say very similar to Exhibit 64
21 except the Colin.wmv is not mentioned in this particular
22 exhibit, but I am not talking about Colin at all during the
23 -- and certainly the defense is welcome to discuss that as
24 much as they want to in their argument. I don't think I
25 have to address in my argument every single issue or piece

1 of evidence that came forward during the proof.

2 THE COURT: Of course you don't, but when you
3 blow up something that's an exhibit and you have removed
4 something from the exhibit that you put into evidence, it's
5 a little confusing for the jury. If they figure out what
6 exhibit you are talking about, they are going to wonder,
7 well, what happened to the Colin.wmv.

8 MS. DAUGHTREY: Well, I would be glad to --

9 THE COURT: What would you argue?

10 MS. HODDE: Your Honor, that's going -- been a
11 point of little bit of confusion on the defense side, is
12 trying to figure out exactly what the state of the record is
13 on Colin.wmv.

14 As the court will recall, I think it's Exhibit 62
15 that is the Colin thumbnail that we had that bench
16 conference about that it's not a sexually explicit in and of
17 itself photo, then I think that the government at that point
18 basically elected not to travel on that image.

19 And I'm not sure -- I mean, if the government is
20 going to be telling the jury, you know, we have made a
21 mistake here, we are not traveling on Colin.wmv anymore,
22 please don't consider that as part of our proof --

23 MS. BAKSHI: Just as a factual recollection,
24 that was a video that does contain sexually explicit
25 conduct. It involves someone named Colin. Colin is still a

1 minor, so he was a minor in that depiction.

2 The issue was only that we found that video after the
3 August 25 deadline. We fully expected and -- we fully
4 expected to present evidence on that through testimonial
5 form, which we have done in other cases. This court ruled
6 we were barred from doing that.

7 It is additional proof related to the distribution
8 counts related to Justinsfriends that we have two other
9 minor victims, including Taylor and Pat [REDACTED] who --
10 whose images are depicted on the Justinsfriends site.

11 It's additional evidence, it's not worth the
12 confusion of it, but there's nothing improper about that
13 evidence. It simply it wasn't admitted because we didn't
14 meet the timeline.

15 And to be honest, I believe that when we were talking
16 about that, we weren't trying to alter anything. Our
17 objection was not really so much about the omission of Colin
18 from the exhibit; we understood why that was -- made sense
19 to some extent. However, it was just the scrawling out of
20 it in front of the jury, it was the form of that that was so
21 objectionable. So we were trying to remedy that whole
22 situation. If we left it in, we just wouldn't talk about
23 it.

24 MS. DAUGHTREY: And I would be glad to make note
25 this is different from Exhibit 64 because it does not

1 contain the Colin.wmv, and that's not a piece of evidence
2 that the -- that we are asking the jury to consider in this
3 case. And I think that should suffice.

4 MS. HODDE: That would be agreeable if the
5 government is going to do that.

6 THE COURT: Okay. All right. Are all your
7 charts here now?

8 MS. DAUGHTREY: I don't believe so.

9 THE COURT: Well, you know, it's 1:30. We have
10 kept this jury waiting an entire additional hour.

11 MS. DAUGHTREY: I understand, Your Honor. I
12 would be more than happy to go ahead as long as it would be
13 all right to bring in the missing exhibits?

14 THE COURT: Yes, yes. I'm going to take a short
15 recess to make sure everyone understands what I need to have
16 Xeroxed, and I'll be right back in. We are in recess.

17 (Break.)

18 THE COURT: Okay. We're ready for the jury.

19 COURT SECURITY OFFICER: Ready?

20 THE COURT: We'll have to change the verdict
21 form as well to take out Thirteen.

22 (Jury enters.)

23 THE COURT: We apologize for the delay. All
24 right. Ms. Daughtrey, are you ready with your closing?

25 MS. DAUGHTREY: Yes. Thank you, Your Honor.

1 Just as you all heard in the beginning of this case, Timothy
2 Ryan Richards is guilty of 21 child pornography offenses in
3 which he exploited adolescent boys for profit and for his
4 own sexual gratification.

5 The defendant is charged in the following counts with
6 -- with the following counts. There are four counts of
7 production of child pornography, four counts of distribution
8 of child pornography, two counts of records requirements
9 violations, four counts of advertising child pornography,
10 four counts of possession of child pornography, one count of
11 conspiracy to distribute child pornography, and two counts
12 of conspiracy to advertise.

13 As you all can see, this is a very, very serious
14 case. And there is proof beyond a reasonable doubt that
15 this defendant is guilty of each and every one of these
16 charges.

17 This defendant was making and selling child
18 pornography of kids under the age of 18. They were
19 adolescent boys.

20 By the time we get done reviewing this evidence
21 together, it's going to be clear that the defendant is
22 guilty of each of these charges. This is going to be made
23 easier because the defendant himself in online
24 communications before the trial and while he was on the
25 stand during the trial indicated that he was guilty of many

1 of these crimes.

2 And the other evidence, the forensic evidence and the
3 testimony of the various witnesses that you've heard, shows
4 that this defendant is guilty of the rest of these crimes.

5 I'm going to highlight the disputes in this case for
6 you. And in considering these disputes, you will want to
7 use your common sense. You will want to use logic. Look at
8 how the facts fit together, what makes sense, what sounds
9 like it's the most reasonable.

10 I'm going to start by talking to you about the
11 definition of child pornography. The judge is going to
12 define child pornography for you in the jury instructions
13 after our closing arguments are given, and I want to show
14 you what she's going to read to you.

15 The term child pornography means any vest visual
16 depiction, including photography, film, video picture or
17 computer or computer-generated image or picture, whether
18 made or produced by electronic, mechanical or other means,
19 of sexually explicit conduct in which the production of such
20 visual depiction involves the use of a minor engaging in
21 sexually explicit conduct.

22 The judge is also going to tell you in the jury
23 instructions that the term sexually explicit conduct is
24 going to include several different things.

25 It's going to includes sexual activity from

1 penetration to masturbation to something called lascivious
2 exhibition of the genitals.

3 The judge is going to also instruct you about what
4 lascivious means in a legal sense, not -- and this is going
5 to be very important for many of the charges in this case,
6 but it's critical for some of the charges, things like
7 distribution of child pornography on Caseyandkylescondo and
8 Caseyscondo.

9 The defendant admitted from the stand that he took
10 pictures of Patrick [REDACTED] when he was underage. That was
11 in Exhibit 16.

12 As part of the jury instructions, the judge is going
13 to instruct you about lascivious, what the term lascivious
14 exhibition of the genitals means, and it will look like
15 this. I think is this very dark. Is there any way we could
16 turn -- and that may be difficult to read, but I'll read
17 through it very quickly in case can you not see the screen.

18 THE COURT: Ms. Daughtrey, I don't want you
19 reading large excerpts from the instructions.

20 MS. DAUGHTREY: Okay. Basically, what this is
21 going to tell you is that you are going to have to make a
22 judgment yourself about what lascivious exhibition of the
23 genitals is.

24 And if you'll read closely in the jury instructions
25 and what the judge tells you, you will see that, in fact,

1 these pictures of Patrick [REDACTED] when he was underage in
2 Exhibit 12 and other places in the evidence are, in fact,
3 lascivious exhibition of the genitals.

4 I'm going to go with you through the counts in this
5 case. I realize that we haven't -- that you all haven't
6 seen the indictment yet, so I want to sort of focus in on
7 what the different counts are.

8 The indictment charges these counts by web sites, but
9 what I'm going to do is sort of break them down and talk to
10 you about them by the type of charge they are.

11 So, for example, I'm going to start with production.
12 And you'll see that there are four counts of production that
13 are charged in this indictment. These are Counts Four, Six,
14 Twenty-Three and Twenty-Six.

15 And the judge is going to instruct you during the
16 jury instructions that there are several things that the
17 government must prove beyond a reasonable doubt in order for
18 you to find that this -- the defendant is guilty.

19 But these are the only things that the government is
20 required to prove. These are what we have been calling
21 elements. And the elements of production are generally that
22 the defendant was using a minor to engage in sex to produce
23 child pornography, that the defendant knew that the minor
24 was under 18, and that the child pornography crossed state
25 lines.

1 There are many aspects of this trial and these facts
2 that are not disputed, and I want to discuss each of those
3 with you in all of the different kinds of counts.

4 In all of these production counts, its is clear that
5 the defendant produced material. The material often has him
6 depicted in there or it has him directing what's going on.

7 The material also clearly consists of sexually
8 explicit activity. The material in all of these cases
9 crossed state lines. And if you'll look at this chart, you
10 will see that -- each of the files that we are talking about
11 in Count Four, Tory DVD and Count Six, Kylebj, and Count
12 Twenty-Three, Casey At 16, and Count Twenty-Five, Paint
13 Tory.

14 Now, the last two were actually found in 8-millimeter
15 format in his filing cabinet in Nashville, Tennessee, in
16 September of 2005. And the two first ones, the Kylebj and
17 Tory DVD were found on his computer at the same time.

18 What is disputed in this case and in these counts is
19 whether or not Patrick [REDACTED] and [REDACTED]
20 otherwise known as Tory, whether or not they were minors at
21 the time that these sexually explicit images were recorded.

22 And with regard to Tory, there's also a question
23 about whether or not the defendant knew that Tory was a
24 minor. And so that's what I want to focus on with you for
25 these particular counts.

1 Counts Six, as you see on that chart, is production
2 of Kylebj.wmv. In your books, that's Exhibit Number 6 and
3 Exhibit 18. And here is a depiction of that or a still shot
4 or frame from that particular video.

5 You heard evidence that this video was of Patrick
6 ██████████ and the defendant when they were engaging in
7 sexually explicit activity in a condo that Mr. Richards'
8 parents owned in ██████████ Delaware.

9 It's clearly sexually explicit conduct. It's clearly
10 produced by the defendant. He's in the image. And it
11 clearly crossed state lines in order for it to be filmed in
12 ██████████ Delaware, and then arrive here in Tennessee.

13 We know from the evidence, too, that Patrick was
14 under 18 at the time that this was filmed. Patrick told us
15 that he was 16 or 17 when the video was filmed.

16 And it makes sense because when he was 17, he was
17 living with the defendant's parents in Maryland. And while
18 he was living there, they would often go to the Bethany
19 Beach condominium.

20 One of the things that's going to come up in this
21 case is credibility, not just in this charge, whether or not
22 Patrick ██████████ was under 18 or over 18, but you are going
23 to have to decide in many different charges whether or not
24 Patrick was of age or not. And I'm going to ask you to use
25 your common sense.

1 On the one hand we have Patrick [REDACTED] telling you
2 many times that he was under 18 in videos. He also tells
3 you and admits to you and to the agents that he was 18 in
4 some of those videos.

5 The defendant, on the other hand, has told you that
6 all but one set of these images, all of them, were filmed
7 when he was 18.

8 In considering this evidence, you need to use your
9 common sense; and by doing that, you are going to be able to
10 tell that the defendant has lied consistently about Patrick
11 [REDACTED] age in these images.

12 We know this from the evidence that we've heard in
13 the courtroom. It is clear and uncontroverted that Pat
14 [REDACTED] and the defendant began dating when Patrick was 14.
15 He turned 18 on July 30 of 2003, and less than five months
16 later they had split up.

17 So according to the defendant, all of the images that
18 you've seen in this case, all of them, except for that one
19 set were taken within a matter of a few months.

20 But this really does not make sense when you compare
21 all of the images that are in evidence. Let's start with
22 Exhibit 12. And in Exhibit 12, you will remember that
23 Patrick told you that he was 14 in these images.

24 And, Your Honor, just for the record, I'm going to be
25 using Power Point quite a bit through this in terms of the

1 lights.

2 Patrick looked so young in those pictures that even
3 the defendant couldn't say with a straight face that he was
4 18 years old. So he had to admit right here in federal
5 court he took these pictures of Patrick when Patrick was
6 underage.

7 He may have wanted to lie to you about Patrick's age,
8 but when he saw those pictures, he had to fess up that that
9 was not an 18 year old boy.

10 And even though he fudged about the age, hemming and
11 hawing about Patrick was, um, um, um, 16, he admitted that
12 Patrick was definitely a minor. I asked him, I said, is
13 Patrick -- was Patrick under 18. Oh, yes, he said.

14 He admitted under oath, he admitted here in federal
15 court, that he produced child pornography. And these images
16 and many more like them were on the Caseyandkylescondo and
17 Caseyscondo web sites. So not only did he produce these
18 images, he was also distributing them too.

19 In the next photo that you see, on the -- the one on
20 the left comes from Government's Exhibit 12. It's the same
21 exhibit. Patrick is 14. On the right Patrick is 15. That
22 comes from Government's Exhibit 31. That's a video called
23 Casey At 16.

24 This is a frame that's taken from Casey At 16. And
25 if you look very closely at these two pictures, it's clearly

1 of Mr. [REDACTED] when he's fairly close in age and young.

2 And then if we go to the next exhibit, we see Mr.
3 [REDACTED] at age 18 in the Mustang car that you saw this
4 morning. He's 18. He told everybody he was 18. The
5 defendant agrees that he's 18.

6 Let's look at him at another age. Here he is age 15
7 to 16. This comes from Government's Exhibit 16.

8 Here he is at 17. This is from the same series as
9 the 0019 and 0020 images.

10 And, finally, we have got Patrick [REDACTED] at 15, and
11 you can see by looking at these pictures that he's aging
12 over time. And it's clear from looking at these pictures
13 that he's aged years, not months.

14 Clearly the defendant is lying about Mr. [REDACTED]
15 age in these videos and images.

16 Next let's look at the Sydney, Australia photos. We
17 know that these G-rated photos, according to the defendant,
18 were taken in Australia when Patrick was 17.

19 We have records from Patrick's passport and
20 border-crossing records that indicate that they did go to
21 Australia when Patrick was 17, in November of 2002.

22 But we also know that the X-rated photos are also
23 from Sydney, Australia. And how do we know that? Let's
24 look at those images very carefully.

25 The first exhibit was from -- was the defendant with

1 the wallaby. And the second picture here is the defendant
2 having sex with Patrick.

3 The G-rated photos, the X-rated photos, each of them
4 the defendant is wearing the same blue shirt.

5 Turning to the next exhibit. Here's Patrick in front
6 of a shark tank in Sydney, Australia. Everybody admits
7 that. And here's Patrick engaged in sexual activity with
8 the defendant. Again, look at those shirts; they look
9 exactly alike.

10 But that's not all. Let's go to another G-rated
11 picture. Again, this is in the shark tank. And if you look
12 closely at Patrick's right hand, you will see an odd-shaped
13 entry stamp.

14 And let's look at one of the X-rated photos where
15 he's having sex with the defendant. And, again, you see the
16 same odd-shaped stamp a little bit faded. Were these taken
17 hours apart or months or years apart?

18 It's obvious that the X-rated photos were taken at
19 the same time that the G-rated photos were taken, just as
20 Patrick told you, when he was 17 years old. The defendant
21 is clearly lying about the X-rated photos.

22 Let's turn then to the Iceland photos and videos. We
23 know from the records that the defendant and Patrick
24 traveled to Iceland in February of 2003; again, Patrick was
25 17.

1 There are border-crossing records. There's a
2 passport. There's Patrick's testimony. And we have Exhibit
3 14, which also appears as Exhibit 22 in the Justinsfriends
4 site JF_fucking.wmv.

5 And Patrick testified that he was 17 in that image.
6 Conveniently, of course, the defendant claims that Patrick
7 was 18, but he doesn't deny that he filmed it.

8 He just says that it happened somewhere else, not in
9 Iceland, and somehow they married them or called them the
10 Iceland pictures.

11 He says that the background doesn't look like the
12 hotel. He shows us pictures of some hotel they stayed at
13 from the Internet.

14 And he tried to cover himself by presenting you with
15 a bill from the hotel. But if you'll notice, that bill was
16 only for one night. And that was the night that they had
17 been turned back because of a snow storm on the east coast,
18 and they had to stay an extra night in Iceland.

19 So I asked him when he was on the stand, have you
20 ever taken any photos of Patrick [REDACTED] in sexually
21 explicit conduct when you were in Iceland. Oh, no, he said.

22 Then you got to see how he reacted when we surprised
23 him with the pictures, the pictures from the right,
24 Government's Exhibit 119.

25 When people are telling the truth, they keep telling

1 the truth. When people are lying to you, and they get
2 surprised, they get flustered. And that is exactly what
3 happened to Mr. Richards on the stand.

4 When I showed him the pictures from Iceland with
5 Patrick naked in the shower with this shower curtain, he was
6 not so glib and so smooth as he had been earlier. He
7 couldn't remember for sure whether or not he stayed in Hotel
8 Lohtleider. He couldn't recall taking sexually explicit
9 images, and he was left to deny that he had ever seen these
10 pictures.

11 These pictures were obviously taken at a hotel with
12 this name, the first hotel that the two of them stayed when
13 they went to Iceland. And how do we know this? Well, you
14 can look at the picture and the shower curtain.

15 Patrick told us that. The metadata that you heard
16 about from Agent Donahue today told us these were still
17 shots that were taken by a camera, not by somebody who was
18 setting a timer and going and posing. It was taken by
19 somebody who was clicking the camera. Who was in Iceland?
20 We have uncontroverted testimony that there were two people
21 in Iceland. There was Patrick [REDACTED] and Mr. Richards.

22 And if you will look very carefully at this series,
23 if you'll take a look back in the jury room at Exhibit 119,
24 you are going to see that this series of ten or so images
25 does not look like images that a person took of themselves,

1 which is what the defendant may want you to believe. There
2 are different angles. There are different zooms, and there
3 are different locations within the shower.

4 The defendant showed you another image of Patrick at
5 some point with his dog, this Kylejackoff, in one of their
6 exhibits.

7 And they showed you a clip talking about the dog and
8 how old the dog was. And I do not know about you all, but
9 just looking at that dog, it looked to me like that dog was
10 a puppy. That dog was gnawing on Patrick's hand, that dog
11 was wiggling around, and he's clearly smaller in that video
12 than what Patrick described he is today as an adult dog.

13 Anyway, after that clip, if you listen closely,
14 Patrick also tells you in that very same video, I don't know
15 anything about cameras so I'm trying it out, I'm using a
16 remote, I really don't know what I'm doing, Casey doesn't
17 let me do this kind of stuff.

18 It's just another desperate attempt by Patrick to be
19 just like his boyfriend, to act just like the defendant.

20 The bottom line is we know that the defendant took
21 these pictures of Patrick in the shower. We know that he
22 took the pictures of them in Iceland. There was no one else
23 in Iceland to do that, so he's lied to you about these
24 pictures, too.

25 And it's not just the images that he's lied to you

1 about. Think about the other things in this case that have
2 happened.

3 For example. do you recall on direct examination when
4 the defendant recognized Mr. [REDACTED] handwriting on the
5 registration for the airplane? They both had had to sign
6 this registration for the airplane because they were
7 co-owners.

8 He was very smooth. Oh, yes, I recognize Mr.
9 [REDACTED] handwriting, no problem. Defense Exhibit 9. But
10 when I asked him if he recognized Patrick's writing and
11 initials on the disk that Patrick had identified as
12 containing child pornography containing sexually explicit
13 images of himself when he was underage, all of a sudden, the
14 defendant couldn't remember the handwriting of Patrick.

15 He had been together with this man for -- or this
16 child for four years, lived with him for nearly half that
17 time, and he told you that he did not recognize his
18 handwriting. It's ludicrous.

19 The bottom line is that the overwhelming evidence in
20 this case has shown us that the defendant has lied to you.
21 Patrick has told you how old he was. But he has only told
22 you that he was under 18 when he was certain that he was
23 under 18. He's been honest with you and said, I'm also over
24 18 in some of these videos.

25 So you can use your common sense to see that Patrick

1 ages during the year, as I showed you earlier, over the
2 course of filming these images.

3 You can look at the data from the camera, the
4 undisputed passport records, the border-crossing records.
5 And you should consider in trying to determine who's more
6 credible who has the most to lose by misleading you?

7 It's certainly not Patrick. He doesn't have anything
8 to lose. He has nothing to gain by driving here from
9 Massachusetts just to lie to you. And the other witnesses
10 had nothing to lose or gain. But the defendant, he's got a
11 lot to lose.

12 And it may be hard for you to believe that he's
13 lying, but somebody is lying. And it's either the defendant
14 or it's everybody else in this case. And we've caught the
15 defendant in a lot of lies.

16 I want to go back to Kylebj. I promise you, I won't
17 be so slow getting through these counts as I am on this one.

18 Getting back on track, the evidence clearly shows
19 that Patrick was under the age of 18 when this was filmed,
20 just as he said.

21 The next count I want to turn to is Casey At 16,
22 which is Count Number Twenty-Three. That's Exhibit 31. And
23 here what we have got is just another one of those stills or
24 frames that comes from the 8-millimeter video.

25 Patrick testified that this video was produced in the

1 defendant's house in [REDACTED] Massachusetts, when Patrick
2 was 15 years old. And that was a time -- the time period in
3 their relationship when Patrick was visiting the defendant
4 on weekends.

5 He told you that they were filming sexual activity
6 once or twice a month, and that began -- their relationship
7 began in 2000.

8 We also know from the evidence in this case that in
9 the summer of 2002, when Patrick was turning 17, the
10 defendant sold his house in [REDACTED] And he ended up living
11 with Patrick and Patrick's parents for a couple of months
12 before they moved down to Maryland to be with the
13 defendant's parents. So Patrick was never in that house in
14 [REDACTED] Massachusetts after he turned 18.

15 So when we showed the video to the defendant, he had
16 to admit that the first part of that film was in [REDACTED]
17 Massachusetts. I don't know if you recall, but it's
18 basically a shot of a sidewalk. It's the walkway to his
19 house there. It's the outside of his house, and he can't
20 deny that.

21 Patrick was only in [REDACTED] Massachusetts at that
22 house when he was a minor, so the defendant can't fudge
23 that.

24 So what he's left to do with you is to lie about the
25 rest of the video. He's going to tell you -- he's told you

1 that Patrick had been -- had turned 18 in the rest of the
2 video.

3 And at that point he loses his smooth tempo again.
4 He couldn't quite remember where the rest of it was filmed.
5 And somehow someone had edited that video, spliced it
6 together with software and tools that didn't have, as if
7 ██████████ Massachusetts is some sort of exotic place like
8 Sydney or Australia that customers would want to see
9 featured on a pornography web site.

10 And that mysterious person then put that 8-millimeter
11 videotape back in his home in Nashville unbeknownst to him,
12 and it was there in September of '05 when the house was
13 searched.

14 It's hardly believable. Use your common sense. The
15 truth is obvious here. The defendant filmed the sexually
16 explicit video when Patrick was 15 when the defendant was
17 living in ██████████ Massachusetts, just like Patrick said.

18 Turning to the next two production counts, Counts
19 Four and Twenty-Five, these are involving two different
20 videos. One is ToryDVD, in Count Four, which is a digital
21 version or digital image of sexually explicit activity.

22 Count Twenty-Five is another video. It's an
23 8-millimeter video that is found in the defendant's home
24 called Paint Tory. And these videos are of ██████████
25 otherwise known as Tory.

1 The Paint Tory and the Tory DVD material came from
2 the same trip. If you look at the Paint Tory 8-millimeter
3 video, it's pretty clear this appears to be original
4 recording of that trip.

5 It was then used in part to create a digital video,
6 the Tory DVD, which also had additional material added to it
7 and was about twice as long as the Paint Tory 8-millimeter.

8 And we know these videos were originally filmed on
9 their trip to Las Vegas where the defendant and Tory and
10 several others were attending a porn conference.

11 The dispute is the time of the recording, but the
12 evidence clearly shows that it was January of 2002. The
13 advertisement for the marketing product shows that it was
14 recorded in 2002.

15 If you look at the Vegas 2002 advertisement, it says
16 right there, Vegas 2002. The defendant admitted that it was
17 filmed in 2002.

18 And Jeremy [REDACTED] came here from London, England to
19 testify that he had seen the defendant and Tory and others
20 during that first week of January 2002.

21 He specifically remembered having spent New Year's in
22 Knoxville, Tennessee, driving all night to Topeka, Kansas,
23 where he met these folks. And he knew they were going to a
24 porn convention in Las Vegas, but he wasn't able to attend
25 with them at that time.

1 He talked about the fact that there was body painting
2 that was going on during that trip.

3 Then the defendant himself tells you, it's January
4 the 4th, good morning, on the video. Then you see Tory
5 getting painted in this pink -- half pink, half black
6 format.

7 And the video shows Richards while he's taking
8 pictures. He not behind the video camera. He's behind the
9 digital camera. He's taking pictures of Tory. We see those
10 pictures in Exhibit 19.

11 But he's also -- you can see in that video, he's also
12 directing things. You hear his voice on the camera. He's
13 telling Tory how to pose. He's telling Tory where to stand,
14 what to do. He's helping to record these events so that he
15 can use this material on his web sites, Caseyandkylescondo,
16 Caseyscondo and Penisclub, and he's going to sell it.

17 And the defendant is right in the middle of this
18 entire production. He's using Tory to make the sexually
19 explicit conduct.

20 The defendant, after all, is a self-proclaimed expert
21 of videotaping. He said in his direct examination he was
22 the one who, quote, talked and summarized in all of the
23 videos.

24 So the question is, did he know that [REDACTED]
25 a/k/a Tory, was still 17? You can see from Tory's birth

1 certificate, Exhibit 29, that his date of birth is
2 February 8, 1984. That means he turned 18 on February 8 of
3 2002.

4 And yet, the defendant told you that he and [REDACTED]
5 [REDACTED] were the same age. There's almost a three-year
6 difference. This may not make much of a difference to me at
7 my age, but, boy, I tell you what, at age 17 and age 20, it
8 makes all the difference in the world.

9 When you are a 20 year old, a 17 year old is somebody
10 who is a lot younger than you are. They are definitely not
11 the same age.

12 Additionally, Richards told you, the defendant told
13 you, on the stand that Tory had a non-pornographic web site
14 when he was underage. And it was non-pornographic because
15 he was underage.

16 So he knew that Tory was underage. He also said to
17 you that he had talked to Tory's parents because Tory was
18 underage. So he certainly knew how old Tory was.

19 And in any case, he should have checked to make sure
20 that he was 18. He did it with a lot of other models that
21 he had for whom he had paperwork, copies of the driver's
22 license. And the fact that he didn't verify Tory's age
23 indicates that he knew that he was still underage.

24 And clearly there was something that happened at the
25 porn convention -- here's a video clip that they didn't show

1 you.

2 (Video is played.)

3 MS. DAUGHTREY: Tory got them kicked out of the
4 convention. Could it have been a problem with his age? The
5 defendant knew that Tory was not 18, and he knew that he was
6 making child pornography.

7 I'm going to go now to distribution of child
8 pornography, and I hope these exhibits will help you and
9 assist you in getting through all this evidence. I realize
10 there's a lot of information here.

11 There are four counts of distribution in this
12 particular case. They are Counts One, Nine, Sixteen and
13 Twenty-One.

14 And the elements that the judge is going to read to
15 you in the jury instructions are here. These are the
16 elements that the government must prove, each and every one
17 of these. And the government submits -- we submit that we
18 have done that.

19 The first element is that the defendant knowingly
20 transported -- or distributed an image or video. The second
21 is that it had a minor who was engaged in sexually explicit
22 conduct, and the third is that it went across state lines.

23 And let me tell you a little bit of something about
24 the -- this first requirement here. The government has
25 listed a number -- a number of sites. And I'm going to set

1 this down here -- excuse me. And I'm saying that the
2 government has identified a number of videos -- if you could
3 leave that, that's fine -- that were on, for example, the
4 CaseysCondo site.

5 And although we've identified several images for each
6 distribution count, you, as a jury, only need to find that
7 the defendant distributed or attempted to distribute just
8 one of these images.

9 There is no dispute in this case that he knowingly
10 distributed images and videos, that these images and videos
11 contained sexually explicit conduct and that these images
12 and videos went across state lines.

13 Each of the four web sites that we are talking about
14 was made available on the Internet. And the judge is going
15 to instruct you that images transmitted or received over the
16 Internet have moved in interstate or foreign commerce.

17 The log files show you that, too. If you look at
18 Exhibit 68 through 72 -- and maybe it's better to recall Mr.
19 Fottrell's testimony that than it is to pour through those
20 log files -- they show -- these log files show that these
21 images were actually distributed to a number of different
22 people over the Internet. People who were looking at this
23 teenage sex online and wanted to download these images, they
24 could do that, and they did do that.

25 And it's also -- this interstate commerce is also

1 supported by the sample e-mails that contain the pay-out
2 statements making money off these web sites -- that's
3 Exhibit 96 -- for Justinsfriends and Penisclub and the
4 customer e-mails for Caseyandcondos (sic) web site.

5 So then we're left with a question. Were these
6 images that we listed -- were those of individuals that were
7 under the age of 18?

8 And turning to Caseyscondo first, which is up here,
9 that's Count Sixteen, Exhibit Number 50, we certainly know
10 that the defendant was in charge of this site, creating the
11 content managing the site.

12 He agreed to that. He stipulated to that in Exhibit
13 38 that he was the one who had the domain name registered to
14 him. His own stage name, Casey, is in the title. He's
15 featured all over it.

16 And he fully admits that this is his site. He
17 started the site around the time he was discontinuing the
18 Caseyandkylescondo.

19 And the forensic proof also shows you that he was
20 controlling the web site from his home computers, uploading,
21 managing, doing different things, manipulating the site to
22 change it and update it.

23 And, frankly, you couldn't find clearer evidence than
24 the Cancel Casey video that you saw. That was Exhibit 49.
25 And, if you recall, that was the video that if a customer

1 was subscribed to Caseyscondo and decided I don't want to be
2 subscribed anymore, I want to unsubscribe, they had to watch
3 over 15 minutes worth of this defendant saying why they
4 shouldn't unsubscribe.

5 It was a great sales job trying to convince them not
6 to unsubscribe. He toured the entire site. He shows you
7 all the different options that are available. He shows you
8 the sex games.

9 He shows you the features, all the pornography, all
10 the different web cams you can look at, the different
11 pornography sites that you can go to, the different things
12 you can download. It's clearly his web site.

13 And we know from the evidence that he began
14 videotaping the material for this web site in 2000 or so
15 when he started dating Patrick [REDACTED]

16 He launched the site in 2005 just after
17 Caseyandkylescondo or just as that one was going down and
18 continued this Caseyscondo site until September of 2005.

19 And now I want to turn to the content. In this case,
20 we have seen this Kylebj, and we have talked about it; this
21 is child pornography. This is Exhibit 6. Patrick is 16 or
22 17.

23 Next we have the Sydney X photos. We have also
24 talked about that. That's Exhibit 7. Patrick is 17. It's
25 November of 2002.

1 The next photos are 0019 and 0020, Government's
2 Exhibit 8. Patrick said he was 16 or 17 in [REDACTED],
3 Maryland. That makes sense. He was living in [REDACTED]
4 [REDACTED], Maryland with the defendant's parents when he was 17.

5 The next one is from Kylesroom. Kyle was 14 or 15
6 living in -- actually, he wasn't living in [REDACTED]
7 Massachusetts, but the defendant was living there, and these
8 pictures, according to Kyle, or Patrick [REDACTED] were taken
9 in [REDACTED] These are clearly child pornography.

10 And, finally, Exhibit 12, these are the KWood
11 pictures that we have already seen when Patrick was 14 in
12 [REDACTED] Massachusetts, which is where he lived, grew up,
13 and where he lives now.

14 And how do we know these images are really of Patrick
15 before I turned 18? Because he told us. Because he based
16 his memory and was able to look at these videos and tell
17 where they were taken based on the background, based on the
18 activity that was going on and based on looking at himself.

19 And he certainly looks different here than he does
20 later on when he's 18. And if the defendant would lie about
21 the Sydney and Iceland photos, what makes you think he's
22 telling the truth about these other ones?

23 If you use your common sense, it's obvious that these
24 are child pornography images. The next web site I would
25 like to talk to you about is Caseyandkylescondo. This is

1 Count Number One and is this Exhibit 57.

2 And, again, I'm not going to go through all the
3 details of it. We know the domain name belonged to Mr.
4 Richards. We know that he has his own stage name in the
5 title. He's featured all over it. He fully admits it's his
6 site, and he started this site in 2003 after Patrick
7 [REDACTED] turned 18, which is really quite convenient because
8 then anybody who comes and says, oh, whoa, is that child
9 pornography on that web site, then all he has to say is, no,
10 everybody who's on that web site is 18, everything was
11 filmed when they were 18. That was smart.

12 And the forensic proof, again, shows he was
13 controlling this web site, so we know this is his web site.
14 Again, the videotaping began with the relationship that
15 began in 2000, and the site was up, by the defendant's own
16 admission, until 2005.

17 The images for that site are similar in nature.
18 There's just a couple of extra images that are listed. We
19 have Exhibit 6, Kylebj. We have Exhibit 7, the Sydney X
20 photos. We have Exhibit 8, the 19 and 20 JPEGs. And then
21 Exhibit 10, this is called [REDACTED] Edited 1.jpeg from
22 Exhibit 10, and that's one of the videos that Patrick told
23 you he was 16 or 17 in.

24 And, again, this makes sense. This is in Bethany
25 Beach. He lived with the defendant and his parents when he

1 was 17, so it makes sense that he traveled out to Bethany
2 Beach and took these images.

3 Going on to Exhibit 11, we've seen these; Exhibit 12,
4 more child pornography pictures. And Exhibit 14, this is
5 from the Iceland video that we've already talked about.

6 And, again, how do we know that these are really
7 images of Patrick before he turned 18? Because he told us
8 that. Because we have passport records. We have
9 border-crossing records.

10 We can look at some of the things about those images
11 and tell that they were taken in Iceland. We can look at
12 these images and tell that they have these funny little
13 stamps on their hands taken at the same time in Australia if
14 you use your common sense.

15 The next web site I want to talk to you about is
16 Penisclub.com. And, again, we have some overlapping images
17 and videos.

18 This is Count Nine, and you are looking here at
19 Exhibit 59. And, again, there's no dispute about who
20 operated this site. The site, the domain name was
21 registered to Mr. Richards. He's featured in Penisclub, and
22 he fully admits that it's his site.

23 The forensic proof shows he was controlling this site
24 on the servers from his home computers, and Patrick is also
25 featured on this site as well as Tory, or [REDACTED]

1 So going through the images that are listed here,
2 let's look at ToryDVD. That's Exhibit 13. We've already
3 discussed that. That's child pornography.

4 Exhibit 15, these are images of Patrick at age 16 or
5 17, [REDACTED] [REDACTED], Maryland, makes sense when he's living
6 with the defendant's parents.

7 Exhibit 18, the Kylebj images. Exhibit 19, these are
8 images from the same series of filming involving Tory, which
9 we have talked about. This is child pornography again.

10 And, finally, Exhibit 20, and this is Patrick when he
11 was 17 in [REDACTED] [REDACTED], Maryland.

12 You can apply the same kind of analysis about the age
13 here. And just as in Caseyandkylescondo and Caseyscondo
14 sites, the filming for this site clearly began in 2000 or
15 2001. This domain name of Penisclub was registered in 2003
16 and was still active in September of 2005.

17 I'm going to turn your attention next to the
18 Justinsfriends web site. And this is essentially Exhibit 64
19 minus this Colin video.

20 Justinsfriends is Count Twenty-One. And this is a
21 little bit different than the other sites because in this
22 case, the defendant did not create the site himself. But by
23 the summer of 2005, he was in full control, and how do we
24 know this?

25 Well, on December 21 the defendant sends an e-mail to

1 his co-conspirator Greg Mitchell, and he's talking about the
2 site, talking about operating it, advertising it.

3 If you look at Exhibit 93, talking about working with
4 Aaron; starting next week, I'll do more advertising, talking
5 about the Justinsfriends site.

6 He then registered the Justinsfriends.net domain name
7 on July 16 of 2005. And shortly thereafter, on July 30 of
8 2000, he's again talking to his co-conspirator Gregory
9 Mitchell, only this time he's talking about the fact that
10 he's taken over the site as sole operator, hiring a new team
11 of people to maintain the site. Justin Berry is no longer
12 part of that site.

13 And if you look at front page of Justinsfriends web
14 site, you will notice at the top, there's two pictures. The
15 one on the left -- it's a little hard to see probably from
16 where you are.

17 But if you look when you go back in the jury room,
18 the one on the left is a shower cam of the defendant, and
19 the one on the right, you may recognize by now, is a frame
20 from the Iceland video.

21 This is the same fucking.wmv that we find on
22 Caseyscondo, but it's been renamed here to JF_fucking, and
23 it's of Patrick when he's under 18.

24 So although the defendant didn't originally create
25 the site, he certainly added content to it. And, again, the

1 forensic proof shows he was controlling and manipulating
2 this site from his computers in Tennessee.

3 If we go and look at the child pornography on the
4 site, we're going to see, again, this Iceland video, and
5 we're going to see this individual by the name of Taylor.

6 Taylor has date of birth of July 11 of 1990. If we
7 look at his birth certificate, we can see and calculate, do
8 the math, we can tell that he's still a minor today.

9 So clearly any of the sexually explicit activity on
10 this web site involving Taylor is when Taylor was a minor.
11 And we know that the defendant was well aware of the fact
12 that Taylor, depicted in these Justin 901 through 930
13 images, we know that the defendant was aware of his age.

14 How do we know that? Well, if you look at Exhibit
15 117, you are going to see a series of e-mails. And in
16 there, he's at least acknowledging that he's aware that
17 Justin Berry, himself, may be on that site at the age of 17.

18 He's fighting about copyright violations. Really,
19 what he wants is to make sure that his competitors are out
20 of the way so he can make more money on the Justinsfriends
21 site.

22 If you go to Exhibit Number 116, this is a July 15,
23 2005 chat, and he's acknowledging -- he's talking to
24 Patoda -- I never can say that right -- who is Greg
25 Mitchell.

1 And Euro Casey is the defendant, and they're talking
2 about Tay. And it comes up that somebody is talking about
3 Tay being 15.

4 And down below, at the bottom, he says, and is this
5 only a part of that exhibit, Greg Mitchell says take down
6 all the Taylor stuff, all of it, and all the Justin Mexico
7 stuff. I can't say how old Justin was in any of it at this
8 point because I don't remember him that well then. And the
9 defendant says, okay, I'll clean up the site.

10 If we then turn to Exhibit Number 94, this is a
11 couple of weeks later, July 9 of 2005. This is an e-mail
12 from his co-conspirator Aaron Brown. It says clear as day
13 about the Taylor videos. It's all child porn anyway since
14 he's well underage.

15 Conveniently, the defendant didn't read this e-mail,
16 this e-mail from his life-long friend and business partner
17 Aaron Brown. He was ready to answer this question when he
18 was asked.

19 But he was a little bit surprised about that earlier
20 exhibit, Number 116, that we showed him that came from
21 another computer. This was a chat log. It wasn't from his
22 computer. He wasn't keeping his own chat logs. He was a
23 little bit surprised when that showed up and didn't have
24 much to say. But he had a good explanation here. He never
25 saw this e-mail from his buddy.

1 The bottom line is the defendant knew that Taylor was
2 under 18, and he didn't care. He -- even if he didn't know
3 100 percent for sure, he certainly ignored all of these
4 messages and all of these indications that he was underage.

5 And he kept the material on his site. He says, I'm
6 going to take it down. Greg Mitchell says take it down; he
7 says, okay, I will, I'll clean up the site.

8 But does he do that? No, he continues to keep it up
9 there. If you look in the Justinsfriends web sites, there's
10 a big, old advertisement in there for Taylor's sites, and
11 it's Exhibit 21, he continues to make money on this site.
12 And the Taylor material was still on that site when it was
13 taken down in September of 2005.

14 All right. I'm going to turn next to the records
15 requirement. And these, again, are the jury instructions
16 that you are going to hear from Judge Trauger about what the
17 government's required to show in order to prove that these
18 records requirements were violated.

19 In this case, the defendant is charged with two
20 counts of record requirement violations. One is Count
21 Eleven for Penisclub, and one is Count Twenty-Two for the
22 Justinsfriends web sites.

23 And the defense wants you to think that this is some
24 kind of little rinky-dink charge that's just a technical
25 kind of thing, but it really is actually one of the more

1 important charges in this case.

2 And the reason is because it shows that this
3 defendant knew that he was trafficking in child pornography.
4 Why else would he have 2257 information for the adults and
5 not bother to have it for the kids?

6 The elements over here are essentially that the
7 defendant knowingly sold, transferred or offered material
8 intended for shipment across state lines; that the material
9 was of sexually explicit conduct; and that the web site or
10 material did not list the physical address where the
11 required individually identifiable records were located.

12 There's no dispute this material went across state
13 lines. There's no dispute that this material involved
14 sexually explicit conduct.

15 What he's going it try to tell you is that this was
16 too complicated, that the web site did list some kind of
17 statement that complied with this law.

18 Actually, if you look at it closely, it's really not
19 disputed. Let's look at Exhibit Number 65. I believe this
20 is the second page of Exhibit 65. This is Penisclub.com.
21 Count Eleven. Pretty easy. There's really no statement at
22 all. All models are under 18 or older, U.S. 2257 proof on
23 file, no address. How does the FBI go out and check these
24 records to make sure that there are no children that are
25 being used and exploited to make the sexually explicit

1 conduct? There is no way that that even begins to comply
2 with that third requirement. No way.

3 And the Justinsfriends web site, that's Count
4 Twenty-Two, the first page of Exhibit 65, very hard to read
5 here, there is a statement. It says: The original records
6 required for materials contained in the web site are kept by
7 the appropriate custodian of records as follows. No be
8 announced. Not a physical address where the required
9 individually identifiable records were located.

10 What's his excuse for that? His co-conspirator, Greg
11 Mitchell, didn't give him an address. How could he put it
12 in there? He's not responsible for that. He's just the one
13 that's the sole operator of that site as of September of
14 '05.

15 The reason we don't see these addresses is because
16 the records don't exist. We never saw records for Patrick
17 [REDACTED] We never saw records for [REDACTED] or Tory.
18 We never saw records for Taylor that said these individuals
19 were over 18 at the time of these recordings, here's proof
20 that they were.

21 MR. STRIANSE: Your Honor, I object to this.
22 The defendant has no burden of proof.

23 THE COURT: The defendant has no burden of proof
24 in this case, members of the jury. The government must
25 prove all these elements beyond a reasonable doubt.

1 MS. DAUGHTREY: The government's experts and
2 investigators looked for these things, and they weren't
3 anywhere on these web sites.

4 Where are the records? We saw vet records for a dog.
5 And we know that the defendant knew how to keep the records.
6 He showed us one himself. He had his own exhibit where he
7 had a photo ID that was copied and a statement, 2257
8 statement, indicating that that particular individual was
9 over the age of 18.

10 He told us that one of his web sites had three
11 cabinets full of these kinds of records. And yet, when I
12 asked him on cross-examination about keeping these kinds of
13 records, whether or not they were at the address he listed
14 on an uncharged count, he just repeated over and over again,
15 you know, it's very complicated, very, very complicated.

16 It's not complicated. All it is, is you list the
17 physical address where the records are. He understood
18 enough to have a statement on Caseyscondo even though it
19 wasn't complete.

20 You can see that in defense Exhibit 6. Although, did
21 he admit essentially, eventually, after some prodding that
22 there were no records at the address he listed.

23 He even told you he took a course in August of 2005.
24 Yet, on September 12 of 2005, he still had not complied with
25 the law. He's not being honest with us because he knows the

1 kids are underage.

2 I'm going to turn now to the advertising counts, and
3 there are four of these. The advertising counts are Number
4 Two, Thirteen, Fifteen and Nineteen. And my very smooth
5 helpers are helping to put up the advertising elements that
6 the judge will read to you.

7 The defendant knowingly made, printed or published or
8 caused to be made, printed or published notice or
9 advertisement. Well, we can see that in each of these
10 counts.

11 The notice -- the notice or advertisement knowingly
12 sought or offered visual depictions of minors engaged in
13 sexually explicit conduct. Defendant knew that the ad
14 offered child pornography, and the defendant knew that the
15 ad would cross state lines.

16 You really didn't hear a whole lot about these
17 charges from the defense because there's not much they can
18 say about it.

19 The government's evidence was very clear that a minor
20 was involved, just as we've discussed earlier, and that
21 defendant knew the minor was involved in each of the web
22 sites or videos that were advertised through these
23 advertising counts.

24 So let's go through them one by one. We have got
25 Count Two. That is the Welcome.wmv. That's Exhibit 25, and

1 this is the sales job extraordinaire.

2 (Video is played.)

3 MS. DAUGHTREY: It's obvious that the defendant
4 made this ad from the content itself. And you heard the
5 testimony from the computer forensic person, Ms. Witsman,
6 that a copy of this exhibit was on both the servers and on
7 the home computers.

8 Makes sense. He was working from his home computers
9 in Nashville and uploading and manipulating the things on
10 the servers that went out on the Internet for everybody to
11 see.

12 And this ad, essentially what it's doing, is it's
13 encouraging people to visit and hopefully join the
14 Caseyandkylescondo.com by becoming a paying member. It's
15 telling you about the web site, telling you about the
16 videos, telling you about all the sex games, telling you
17 about all the photos.

18 And we know from talking earlier that
19 CaseyandKylescondo is full of child pornography. And even
20 though it's not required by the law, this particular video
21 itself has child pornography in it.

22 This is the child pornography here. The very
23 beginning of it, remember when Patrick admitted he was 18 in
24 that picture, he's not going to tell you that he's under 18
25 in every picture. He's going to be honest with you. But

1 here we are, child pornography. If you could finish it,
2 please?

3 (Video is played.)

4 MS. DAUGHTREY: So the defendant knew not only
5 that this -- or excuse me. So the same thing that we talked
6 about for the distribution in the Caseyandkylescondo applies
7 here.

8 If Caseyandkylescondo contains child pornography and
9 this advertisement is trying to get people to join
10 Caseyandkylescondo, which is what it's doing, then it's
11 advertising to a web site that has child pornography.

12 And the defendant knew that Patrick, the minor, on
13 that web site, was underage in some of those videos, and he
14 certainly knew that he was engaged in sexually explicit
15 activity, he put it on the Internet, it's clear as day:
16 Count Two, Welcome.wmv, this is advertising child
17 pornography.

18 Turning next to Count Three, this is involving
19 ToryDVD.wmv. And if you look at this, and I'm not going to
20 play this one, I don't think, it's a very long one, couple
21 of hours, I think, it has Caseyandkylescondo at the end.
22 It's just got the web site name at the end.

23 And basically what it's doing by putting that up is
24 encouraging whoever watches it, whoever gets to watch it,
25 the free previewer, you go to the web site,

1 Caseyandkylescondo, you click on this ToryDVD video to see
2 what kind of stuff is on that web site, and at the end it
3 says Caseyandkylescondo.com.

4 It's clearly advertising for that site. It's a video
5 that's used as an advertisement. And we know from talking
6 earlier that this defendant was involved in the production
7 of this video, the production of this advertisement.

8 This ad was encouraging people to become members, to
9 pay monthly fees, to join this web site. And, again, we
10 have talked several times about Caseyandkylescondo
11 containing child pornography.

12 Turning now to Count Fifteen, this is the Vegas
13 video, 2002, Exhibit 60. This flyer shows up on the
14 Neova.net server that's also called the Hurricane Electric
15 server or San Francisco server that the defendant had the
16 power to use for his best endeavors.

17 We know that he had a user account on that server in
18 addition to his e-mail account, which means that could he
19 get up there and work on content.

20 This is his video, Vegas 2002. We saw him producing
21 it. He's advertising to sell it. And this is Tory, or
22 [REDACTED] at 17. And just like we talked about for
23 the production counts of Tory DVD and Paint Tory, we know
24 that the defendant knew that Tory was 17. He put this on
25 the Internet, made it available. The advertisement crossed

1 state lines.

2 Count Nineteen, this is involving Justinsfriends.
3 It's Exhibit 63, Justin Preview 2. What this advertisement
4 was for was to say to a customer we want you to come in here
5 and look at what we've got and join the Justinsfriends
6 premium; for a little extra money, we can give you a little
7 extra content.

8 This is the ad that Special Agent David Condo came in
9 and talked about. We have the stills from Justin 901
10 through Justin 20 up here, Exhibit 63. And what Agent Condo
11 told you is that he actually saw the video.

12 That video was on the live site in July of 2005 when
13 Special Agent Condo went on there as an undercover person
14 and subscribed to the web site and saw the Justin Preview 2
15 video. It was a video that contained these stills. These
16 are frames from that video.

17 We know that it was this defendant who put the Justin
18 Preview 2 on there because he admitted that he put it
19 together. He's just blaming Justin for giving him content
20 of a minor named Taylor.

21 But we've covered that, and we know that this
22 defendant knew perfectly well that Taylor was under 18. All
23 these images, too, these Justinsfriends images, they are all
24 on his home computer. Again, this makes sense because he's
25 working from his home uploading to the servers.

1 This ad sought to distribute child pornography
2 because Justinsfriends had child pornography on it. What
3 kind of child pornography did it have? It had the Taylor
4 videos. It had JFfucking of Patrick when he was under 18.

5 We know it has child pornography. He's advertising
6 to that site, and he put it on the Internet for
7 advertisement, Justinsfriends 2, another video
8 advertisement. And that's enough for you to find by him the
9 putting that up on the web site that that advertisement
10 traveled in interstate commerce.

11 I'm going to address very quickly the next set of
12 charges that I would like to talk to you about, and that is
13 the possession charges. And these are Counts Five, Seven,
14 Twenty-Four and Twenty-Six.

15 And basically what these charges are is companion
16 charges to the production. For each of the production
17 charges we know that he also possessed these particular
18 images.

19 The possession requirements are here listing the
20 three different elements of the crime: That he knowingly
21 possessed child pornography, that the child pornography had
22 crossed state lines, and that the defendant believed that it
23 was child pornography.

24 And we know that he knew that Tory DVD and Paint Tory
25 contained child pornography, and we know that he knew how

1 old Patrick was when he recorded those images, and the Casey
2 At 16, and the Kylebj.

3 So each these, defendant was clearly, clearly in
4 possession of child pornography just as he produced each of
5 those images.

6 And the final set of charges that I would like to
7 talk with you about are the conspiracy charges, and I'd like
8 to start with conspiracy to advertise.

9 And I believe there may be a chart somewhere that has
10 those three counts listed. These are Counts Twelve,
11 Eighteen, and Twenty.

12 And to prove conspiracy to advertise, the elements of
13 this crime are as follows. That two or more people
14 conspired or agreed to distribute -- excuse me -- to
15 advertise child pornography, that the defendant knew and
16 voluntarily joined that conspiracy, and that one of the
17 co-conspirators acted to advance or to help the conspiracy.

18 So turning first to Count Twelve, let's look at the
19 Condodollars program. That's Exhibit 97.

20 And what this program was, you will remember from the
21 testimony, is this is an affiliate program that offers
22 discounted memberships to other people who are running web
23 sites, to web masters, and a percentage of the income from
24 memberships to these sites if the other web site or the
25 other web master will take a hyperlink from their web site

1 and point it over here to CaseysCondo.

2 So if I go to Amazon.com, and they happen to have
3 Caseyscondo advertised on their site, then this affiliate
4 program -- for every membership that I get on Caseyscondo,
5 I'm going to get -- that links through my site, I'm going to
6 get 50 percent of the profit, and I'm also going to get a
7 reduced membership.

8 So that's basically what this Condo Dollars program
9 is. It's trying to generate more traffic, more money for
10 the Caseyscondo web site.

11 So let's look at these elements: Two or more persons
12 conspired. Well, who was involved in this conspiracy?
13 Aaron Brown was the other co-conspirator that was identified
14 by the defendant's own admission.

15 There are also other unidentified co-conspirators who
16 are advertising to Caseyscondo for money. For example,
17 Amazon.com, if they were doing that, would be one of those
18 unidentified co-conspirators, although I'm sure Amazon.com
19 does not advertise to Caseyscondo.

20 And we know that Richards knowingly and voluntarily
21 joined the conspiracy because he's actually the ring leader.
22 He's the one who runs the Caseyscondo web site.

23 But even if you were to think that Aaron Brown or
24 anybody else was responsible, then this defendant is still
25 on the hook and that's because there's something called the

1 Pinkerton instruction, and I will get back to that
2 momentarily.

3 The final element here is that a member of the
4 conspiracy did one overt act that's described in the
5 indictment for the purpose of advancing or helping the
6 conspiracy.

7 So let's -- you don't have the indictment in front of
8 you, but you will very soon. And when you do, you are going
9 to see that there are five things listed.

10 And the government will submit to you that all of
11 these overt acts has been established by this -- by the
12 evidence in this case beyond a reasonable doubt.

13 First, there's the condos affiliate program, the
14 Exhibit 97. We have seen the old pages, and we also saw the
15 new pages that were for a later version of the web site
16 talking about making money for the affiliates.

17 It's hard to read from here, but if you look at the
18 exhibit when you go back in the jury room, you can read that
19 it's for the purpose of making more money for both the web
20 sites that direct the traffic and for -- to get the traffic
21 so that they are making more money at Caseyscondo.

22 People were clearly compensated for directing
23 visitors to Caseyscondo. They were offered to be
24 compensated.

25 And then we heard testimony about Aaron Brown's

1 company, Neova.net. And that was a credit card billing or
2 payment processing web site. That was the one that was on
3 the San Francisco or Fremont or Hurricane Electric server.

4 And what we see is that Mr. Richards and Mr. Brown
5 are working together to keep track of the number of
6 referrals so they can make pay-outs, so that they can track
7 how much money they're making and they can periodically
8 issue the payments to the people who are directing
9 memberships to their site.

10 There is a Neova.net e-mail statement that shows the
11 half price memberships. If you look at Exhibit 105, you
12 will see that there are places in that pay-out statement
13 that specifically refer to this affiliate program.

14 And finally, there were hyperlinks for web masters
15 that were on these web sites so that the web masters could
16 actually find out how to join the site, what the terms were,
17 and also requiring that they go through billing through
18 Neova.net.

19 They didn't want to go through Verotel or any other
20 payment processing. They wanted to keep the funds within
21 Neova.net and the profits to themselves. So that's Count
22 Twelve, conspiracy to advertise.

23 And going back to the -- let me go back to element
24 number 2, defendant knowingly and voluntarily joined the
25 conspiracy.

1 The judge is going to read you something called the
2 Pinkerton liability instruction. And basically what that
3 instruction will tell you is there are two ways for you to
4 find this defendant guilty of a crime.

5 The first is by the government convincing you beyond
6 a reasonable doubt that he personally committed or
7 participated in the crime.

8 And the second is based on a legal rule that says
9 that all members of a conspiracy are responsible for acts
10 committed by other members.

11 The government submits that really because he was a
12 ring leader here, I think under the first prong that you are
13 going to very easily be able to find beyond a reasonable
14 doubt that he personally committed this crime of conspiracy.

15 But you can also go under the second prong if you are
16 unsure. The second count of conspiracy to advertise is
17 Count Eighteen, and that involves the Justinsfriends web
18 site.

19 And in this particular count, what we've got for
20 co-conspirators are the defendant; his long-time buddy,
21 Aaron Brown; and business partner, Greg Mitchell; and Justin
22 Berry.

23 And how do we know that the defendant knowingly and
24 voluntarily joined the conspiracy? Well, we have all those
25 exhibits that I have shown you before, the e-mails in the

1 summer of 2005, showing that he's the one in control; he's
2 the sole operator of the Justinsfriends web site.

3 In fact, if you look at one of those e-mails, what
4 you're going to find in that, I believe it may be the
5 June 21, 2005 e-mail, and that's Exhibit 93, he's talking --
6 the defendant is talking about his plans.

7 And he's telling Justin Berry -- he's referring to
8 Aaron's involvement, talking to Greg Mitchell, and he's
9 saying to Justin, Justin, I think we need to hold off on
10 doing any fancy kinds of advertising; we'll start out with
11 this kind of advertising, and then we'll do some other
12 things later. So look at that carefully.

13 The e-mails themselves memorialize not only the
14 advertising but the conspiracy to advertise.

15 You have also got e-mails -- a mass mailing e-mail in
16 Exhibit 92, which is up before you now. And in this
17 particular e-mail, what the defendant is doing is testing
18 out a plan to send out a mass e-mail message -- I'm sure you
19 all have gotten some of those spams before -- a mass e-mail
20 message saying, we have got a new and improved
21 Justinsfriends web site, come join it. He's added his own
22 material to it.

23 You have also got the digital movie file Justin's
24 Preview 2 that's on the web site, and there's some
25 discussion going back and forth in these e-mails about that

1 particular video.

2 And in the text of Justin's Preview, right above
3 Justins Preview 2, the video, where the video would say --
4 you can't read it very well from here -- but it says
5 Justinsfriends is often imitated but never duplicated, but
6 luckily you found the original and only site with new Justin
7 content owned by Justin himself.

8 So we have numerous different things that are showing
9 the connection between Aaron Brown, Greg Mitchell, Justin
10 Berry, and the defendant and advertising the site trying to
11 get more people to join it, trying to make more money from
12 it.

13 And we even have an audio recording in which the
14 defendant admits that he was advertising to Justinsfriends.

15 (Recording is played.)

16 MS. DAUGHTREY: I'm going to blame it on Justin,
17 but really it's me advertising. The government submits that
18 we've shown beyond a reasonable doubt that the defendant was
19 involved in a conspiracy to advertise Justinsfriends.

20 In the final count, and I'm sure you all will be glad
21 that I'm at the final count, is this conspiracy to
22 distribute, Count Twenty. Again, we are talking about
23 Justinsfriends web site. We have the same group of people
24 that were advertising. It's just that in addition to
25 advertising, obviously they are advertising the web site,

1 right?

2 They are advertising the web site because they want
3 people to join, and they want to be able to get money in
4 exchange for distributing the content of Justin's web site.

5 The defendant owns the domain name
6 Justinsfriends.net. Justinsfriends.net and
7 Justinsfriends.com, they all point to the same place on the
8 server.

9 We even have FTP logs that show that the
10 Justinsfriends web site was transferred from one server to
11 another by this defendant.

12 He's made it even bigger than before. He's got
13 himself in it, and he's got an underage Patrick [REDACTED] in
14 it.

15 In conjunction with conspiracy to advertise, that
16 involved conspiracy to distribute, he's also guilty of
17 conspiracy to distribute.

18 And just as you heard in the beginning of this case,
19 the defendant Timothy Ryan Richards is guilty of all 21 of
20 these child pornography offenses. And in each one of those,
21 he was exploiting an adolescent boy for profit and for his
22 own sexual gratification.

23 The government submits that we have shown beyond a
24 reasonable doubt that all of these elements in these crimes
25 have been proven, and we ask you to find this defendant

1 guilty of each and every one of these 21 counts.

2 Thank you.

3 THE COURT: Thank you, Ms. Daughtrey. I think
4 we'll take our recess at this time. We'll take a 20 minute
5 break. The jury is excused.

6 (Jury exits.)

7 THE COURT: Do you have an estimate of how long?

8 MR. STRIANSE: Your Honor, I think about 30
9 minutes, 25 minutes, something like that.

10 THE COURT: Okay. All right. Well, given that
11 the instructions are 64 pages long, we probably ought to
12 bring them back in the morning for instructions, don't you
13 think?

14 MS. DAUGHTREY: Yes, that sounds like a good
15 idea.

16 THE COURT: Okay. And my plan is to excuse the
17 last two alternates, keep the other two, keep the first two
18 alternates, although release them to -- I'm going to release
19 the last two and excuse from presence the first two, not
20 releasing them and tell them they can go about their
21 business as long as we can reach them on short notice and
22 that we will let them know -- if they are not called back,
23 we will let them know when the jury is finished
24 deliberating.

25 I will give them the same instructions about not

1 discussing the case, and that sort of thing. But given that
2 the deliberations could go on for a while, I think we should
3 not release two. Is that agreeable to everybody?

4 MR. STRIANSE: That's fine, Your Honor.

5 THE COURT: Is that procedure all right with
6 everybody?

7 MR. STRIANSE: Yes.

8 MS. DAUGHTREY: Yes, Your Honor.

9 THE COURT: All right. Very good. Okay. We'll
10 take a 20 minute recess. You have got the final version,
11 and she's retyping the verdict form and getting the
12 indictment in shape, so I'll let you all see all of that
13 before we go. All right. We are in recess.

14 (Break)

15 THE COURT: Okay. Ready?

16 MS. BAKSHI: Your Honor?

17 THE COURT: Yes.

18 MS. BAKSHI: May I just ask since we are turning
19 off the equipment for -- during the defense closing, if we
20 could just take a couple of minutes between to warm up the
21 equipment and --

22 THE COURT: For your rebuttal?

23 MS. BAKSHI: For the rebuttal. Thank you.

24 THE COURT: Okay. I won't take a break. I'll
25 just -- are you going to use --

1 MR. STRIANSE: No.

2 THE COURT: All right.

3 THE CLERK: I haven't turned anything off.

4 THE COURT: You haven't turned anything off. We
5 can leave it like this, and it will be all ready. Okay. We
6 are ready for the defense closing. Mr. Strianse?

7 MR. STRIANSE: Thank you, Your Honor. Good
8 afternoon. This is my pencil point presentation that you're
9 about to hear this afternoon.

10 On behalf of Mr. Richards and his family, we want to
11 thank you for your service in this case. We recognize that
12 jury service is really a sacrifice, that you are away from
13 work, you worry about your job, you worry about your boss,
14 you are away from your family.

15 It's a challenge to drive downtown every morning,
16 deal with the traffic, the parking, the security to get in
17 the building, the cafeteria, everything else you have got to
18 deal with, so we recognize that it is a sacrifice. And we
19 do appreciate your time and attention, particularly in a
20 case like this where you had to come upstairs and deal with
21 some very difficult content and have to deal with some very
22 difficult issues in a case.

23 As the case has unfolded in the courtroom over the
24 last couple of weeks, I have been reminded that the Internet
25 is a virtual world.

1 The ultimate irony is that the government has
2 presented you with a virtual case, something less real and
3 something far less satisfying. Instead of proof beyond a
4 reasonable doubt, you all have been left to speculate about
5 the ultimate issue in this case.

6 And you may remember opening statements from a couple
7 of weeks ago. I told you that the case was about knowledge.
8 And when you strip away all this stuff, that's what the case
9 is about.

10 Was the performer under the age of 18? Obviously, if
11 the guy is over the age of 18, there's no criminal
12 violation. And if the performer was under the age of 18,
13 and is this the critical one, did Timothy Richards know
14 that?

15 And if he didn't know, there would be no criminal
16 liability in the case, and it would be your duty to acquit
17 him.

18 Despite all of the fancy terminology, despite all the
19 labels that this was an Internet case, the computers and the
20 computer experts that you have seen and heard from over the
21 last couple of weeks don't answer those questions as I
22 framed them for you this afternoon and as I framed them in
23 opening statement.

24 This is a decidedly low tech exercise that you're
25 about to embark on when you go back in the jury room and

1 have to sift through these hundreds of exhibits that you
2 have seen.

3 But you're judges of facts. And when you get back
4 there around the table, I want you to look at each other and
5 ask yourselves logically, if you're trying to answer some
6 basic questions, is the performer 18, did Richards know that
7 the performer was 18 or -- under the age of 18 or over the
8 age of 18, wouldn't the logical starting point be to ask the
9 participants in the crucible of this courtroom and the
10 crucible of cross-examination to hear what they had to say
11 so you as judges of facts could make an appropriate
12 determination?

13 I respectfully suggest to you, ladies and gentlemen,
14 you didn't see la in this case. Instead, what you got was a
15 healthy dose of trial by proxy.

16 You got birth certificates instead of warm bodies.
17 You got a very confusing don't-ask-don't-tell method of
18 indirect proof.

19 The best example of that was this [REDACTED] or
20 Tory. Let's not ask [REDACTED] who lives in Maryland,
21 how old he was in that image and what everybody's
22 understanding was about his age. Let's fly a guy in from
23 London, Jeremy [REDACTED] and ask him, by the way, did you run
24 into a guy named [REDACTED] also known as Tory, four
25 and a half years ago in the midst of a road trip.

1 They can fly somebody in from London, ladies and
2 gentlemen, but they can't get a fax from Iceland to give you
3 a hotel record.

4 Let's talk about Jeremy [REDACTED] and see how compelling
5 his testimony was on the ultimate issue of who knew the age
6 of [REDACTED] Tory, when those images were made.

7 [REDACTED] told you he was a friend of Tim Richards. He
8 lived with Tim. He lived with Pat in Florida.
9 Interestingly, he knew of no child pornography on any of Tim
10 Richards' web sites.

11 He knew of no films or pictures made by -- made of
12 Patrick [REDACTED] prior to Mr. [REDACTED] 18 birthday, but
13 he's the guy that they roll in here to try to conclusively
14 age the Paint Tory nonsense images that you saw.

15 And his recollection is, if I remember it
16 correctly -- and let me say this. You all have been very
17 good about taking notes, and your recollection controls. If
18 I say something that's into the consistent with your
19 recollection, you use your notes and your recollection.

20 But he says that he drove to Kansas in January of
21 2002 to meet with a group of friends that included Mr.
22 Richards, and that these friends were in the midst of this
23 cross-country trip, and, interestingly, he assumed they were
24 going to some identify -- unidentified pornography
25 convention, think about this as sort of an aside.

1 Here it is the winter of 2002. These people are all
2 friends. They are all peers. This [REDACTED] is in the
3 company of all of his high school graduated friends. What
4 does that say about Mr. Richards' honest and sincere belief
5 that [REDACTED] was over the age of 18?

6 Now, Jeremy [REDACTED] doesn't help them with the name of
7 the convention. They can fly a guy in from England, but
8 they can't get any records to even identify for you the name
9 and location of this pornography convention that is so
10 critical to aging this video.

11 And remember, ladies and gentlemen, who has the
12 burden in this case, proof beyond a reasonable doubt, and
13 they don't carry their burden by getting up here and saying
14 that Timothy Richards is a liar.

15 All that Mr. [REDACTED] could tell you was that he was
16 with this group very briefly, one night, did not go to any
17 convention with them, parted company with the group. They
18 didn't even ask him how old he thought [REDACTED] was at
19 the time of that trip.

20 What did Mr. Richards tell you? And the government
21 talked about credibility. And the judge is going to give
22 you an instruction at the end of these proceedings about
23 credibility, and it's really a common sense exercise, what
24 you're supposed to look for. These are things that would
25 have occurred to you anyway in judging the credibility or

1 believability after witness.

2 But you heard Mr. Richards testify, and you all be
3 the judges of how he did in his direct examination, how he
4 withstood cross-examination and whether he sounded credible
5 or believable to you.

6 What did he tell you about this Las Vegas convention?
7 He told you about the registration process, how they were
8 carefully checking identifications, how badges were issued
9 to everybody that was going to come into the convention;
10 that there were different kinds of wristbands, one kind --
11 one color to get in, another color to get in and be able to
12 drink.

13 He talked about the flanks of guards that were there
14 at the convention. And he also told you that his peer, his
15 friend, Christopher Billings was admitted into the
16 convention.

17 And, remember, he's there with his group of friends,
18 Mr. Billings. He's doing things that are over the age of
19 18.

20 On this road trip Mr. Richards told you he was one of
21 the group, he would go into the store, buy himself tobacco
22 products, all the earmarks of somebody that was over the age
23 of 18.

24 But remember this. This was content to be made for
25 Mr. Billings' site. This was Mr. Billings project. It was

1 a way for him to promote himself and to make money.

2 But that's the government's pretzel logic that
3 they've given you over the last couple of weeks in this
4 case.

5 Special Agent Donahue tells you that he met with
6 Mr. [REDACTED], he interviewed Mr. [REDACTED], and who do they
7 bring in? They bring in the proxy from London, Mr. [REDACTED]

8 Another head-scratcher on this whole Paint Tory image
9 is what about the other people that were in the video? What
10 about the girlfriend Natalie? What would she have known
11 about everybody's understanding of the age?

12 What about the guy that was operating the camera that
13 you have heard about, Christopher Cornelius? We don't have
14 any of that. You are just left to sort of scratch your head
15 and speculate was the guy 18, was he 17 years and 11 months?
16 What was everybody's understanding about how old he was?
17 Was he 19? We just don't know.

18 The judge is going to instruct you at the end of this
19 thing, probably tomorrow, on what the law is. And she's
20 going to talk to you about reasonable doubts.

21 Proof of such a convincing character that you would
22 be willing to act upon it without hesitation in the most
23 important of your affairs. Is what they cobbled together
24 regarding Paint Tory something that you would rely on in the
25 most important of your affairs? I don't think so.

1 And when you get back there, and you are having your
2 discussions as judges of the facts, ask yourselves why would
3 the government not bring these people in? Why would they
4 put us in the position of having to rely on these inflatable
5 people or these proxies?

6 Well, a cynic might say that it's certainly safer to
7 do it that way. You could really filter and control the
8 message that way, and then there's also not any bothersome
9 cross-examination of on these ultimate issues if you don't
10 produce these witnesses.

11 But the government wants to frame the debate as
12 either Tim Richards is lying or everybody else is lying.
13 Well, that might mean something if you had seen everybody
14 else.

15 And then they put in these e-mails in a vacuum where
16 they are not authenticated by either side of the e-mail.

17 How would you like to see somebody's liberty
18 determined by an e-mail where there's a question in your
19 mind who sent the e-mail, what did they mean by the e-mail,
20 what did the Verotel representative mean when he put that
21 language in the e-mail? Did Tim Richards even receive the
22 e-mail? But that's what the government is asking you to do
23 and asking to you feel comfortable about.

24 The government made some promises in its opening
25 statement. They told that you they would prove beyond a

1 reasonable doubt that Timothy Richards knew that these
2 performers were all underage, and they told you how they
3 would go to do it.

4 They said we'll do it by the victims, plural. Well,
5 they fell a little short on that. We saw [REDACTED] but we
6 didn't see anybody else.

7 MS. DAUGHTREY: Your Honor, may we approach?

8 THE COURT: Okay.

9 (Bench conference begins.)

10 MS. DAUGHTREY: Your Honor, I'm going to object.
11 You had said he could touch on the fact that the some of the
12 witnesses didn't come in, but he's -- I mean, the last five
13 minutes have been just the same thing over and over again.

14 THE COURT: He's entitled to make this argument.
15 He's not saying they are exclusively in your control. He's
16 entitled to make argument about the whole center of proof.

17 MS. DAUGHTREY: Okay.

18 (Bench conference concludes.)

19 MR. STRIANSE: As I was saying, they said they
20 would do it three ways, victims, plural. We didn't see any
21 plural victims. They could do it by forensics and also do
22 it by the law enforcement witnesses.

23 Let's talk about that for a minutes. I think when
24 you get back there and look at each other, it sort of sounds
25 like the government over-promised and under-delivered in

1 this case.

2 Other than law enforcement witnesses, like Special
3 Agent Donahue, who can't answer the ultimate question, who
4 did you all hear from, you heard from the bitter
5 ex-boyfriend, who is also the business partner.

6 They don't want you to think about him, Mr. [REDACTED]
7 being the business partner, but that's what he was. And you
8 heard from the various -- you all heard from the very scary
9 disgruntled ex-employee, Mr. [REDACTED] who has no connection
10 whatsoever to any of the charged conduct.

11 And the judge will tell you in the instructions
12 tomorrow morning that Mr. Richards is not on trial for
13 anything that's not in the indictment that's being presented
14 to you.

15 He's the guy that has the grainy, second, third
16 generation copy of an e-mail that was not maintained on any
17 computer.

18 Let's talk about Mr. [REDACTED] for a minute, who I
19 have characterized as the bitter ex-boyfriend. Hell hath no
20 fury like Patrick [REDACTED] scorn. And you heard him
21 testify here, and you heard him under cross-examination.
22 And you saw the way he reacted to his direct examination
23 versus the way he reacted to cross-examination.

24 And since he was really the only warm body victim
25 that we've heard about over the last couple of weeks, in

1 many ways the case sort of devolved into one of those really
2 bad Lifetime movies about the break-up of a relationship.

3 And you heard me say the word "victim", and I think
4 the government was really over-playing the victim card when
5 it came to Mr. [REDACTED]

6 Respectfully, they did everything in their direct
7 examination except dress him up in a sailor suit to answer
8 their questions.

9 Now, this is the same guy that put himself on his own
10 long before he met Mr. Richards out on the Internet in the
11 most explicit sexual situations for literally the world to
12 see, but the government wants you to believe that it would
13 offend all of his sensibilities to have to watch some of
14 these videos and perhaps identify them for the jury.

15 They showed you Government Exhibit 12 and said that
16 Mr. Richards admitted to the age of Mr. [REDACTED] When you
17 get back there, look at Government's Exhibit 12 and see if
18 that meets the definition of any sexually explicit content.
19 And that was content that Mr. [REDACTED] put on the computer.

20 And his direct examination, ladies and gentlemen, was
21 very carefully choreographed, and I suggest it was
22 choreographed to leave some really erroneous impressions
23 with you and to paint him as an even more sympathetic victim
24 if they could get away with it.

25 I mentioned something in opening statement, I think

1 now that we have heard the proof it's even more interesting
2 to discuss. There seems to be there is a fine line between
3 victim and perpetrator in this case.

4 They want to bolster the credibility of Mr. [REDACTED]
5 by saying he had nothing to lose. Well, let's talk about
6 that. He turns 18 July 30 of 2003.

7 Two months later, October of '03, he knowing and
8 willfully associates himself with a web site that they say
9 is riddled with child pornography, Caseyandkylescondo.

10 They come knock on his door February of 2006 to
11 answer some questions. Don't you think he would be a little
12 pliable with the government?

13 You know, there was a part of his direct examination
14 early on where they were really trying to parade him as a
15 victim. And I think he was happy to leave you with some
16 false impressions.

17 He was asked very gently, sort of a Mr. Rogers line
18 of questions, growing up, did you have a computer at home
19 and play video games? There was no web activity before you
20 met Mr. Richards, was there?

21 And then I asked him on cross-examination, what about
22 this Cameraads web site that you participated in? That was
23 long before you met Mr. Richards. That was based on an
24 inspiration from his father who had his own web cam, who was
25 performing in sexual situations, and meeting women from all

1 parts of the world on the Internet.

2 And Mr. [REDACTED] admitted what those Camera Ads
3 performances were. He said they were hard core, live shows,
4 involving sexually explicit content that I'm not going to
5 get into.

6 But in addition to giving out the live content, he
7 admitted that he recorded some content so he could e-mail
8 that content and exchange that content with his customers.

9 He also said that he engaged in cyber sex, hard core
10 chats and engaged in virtual dating. Again, that's long
11 before he ever met Tim Richards. That's what comes out on
12 cross-examination.

13 But the impression they want to leave you with on his
14 direct examination was questions like this: Where did you
15 get the idea to do Kylesroom? Tim. Where did you get the
16 idea to charge money? Tim.

17 As I said, the government doesn't want to talk about
18 the reality of Pat, Pat [REDACTED] stage name Kyle, being
19 involved in an adult commercial enterprise known as
20 Caseyandkylescondo after his 18th birthday.

21 The reality, ladies and gentlemen -- and you all
22 know -- the government says, please, use your common sense.
23 Well, by all means, please use your common sense.

24 You all know from having sat in here for the last
25 couple of weeks that [REDACTED] Mr. Berry, Mr. [REDACTED] they

1 were all actively participating. They had their own sites,
2 had their own addenda, had their own careers.

3 And they were all doing it for one reason. They were
4 actively promoting themselves. Everybody trying to grab
5 what they could from their customer base on the Internet.

6 Now, Mr. [REDACTED] never told the government when he
7 was interviewed in February of '06 and when he was
8 interviewed about a month before this trial about his
9 biggest benefactor Alex Richards, never told them about
10 that.

11 Alex Richards, the guy that gave him \$8,000 for a
12 down payment on his car, now Mr. [REDACTED] said, well, that
13 didn't really go into my pocket, it went into the car; a
14 \$6,500 watch, and you saw as I labored through all of the
15 PayPal gifts that he received from Alex Richards.

16 The government also does not want to dwell on his
17 fuzzy and self-serving recollection about things. Now, when
18 you get back there and check your notes about his direct
19 testimony and his cross-examination, he said things like
20 there was no filming in Maryland after he turned 18.

21 Take a look at the American Express receipts that
22 place him in [REDACTED] [REDACTED] Maryland in August of 2003, and
23 clearly after he turned the age of 18.

24 We have had all this debate and discussion about him
25 using the dog to date different images. Well, he certainly

1 wasn't 16 years old when he got the dog. Take a look at the
2 dog records.

3 He was clearly 17. Take a look at the video, he was
4 clearly 18. And when it says December of '03 Webcamfam,
5 that is an accurate time when all of that [REDACTED]
6 series was made, the Kylebj, the Kyle_shower that we showed
7 to you.

8 He also told the FBI that he made this JLK video in
9 Iceland as part of this Iceland series. Well, he --

10 MS. BAKSHI: I'm sorry to interrupt. Objection,
11 Your Honor. We have covered this many, many times, this JLK
12 video. May we approach?

13 THE COURT: Mr. Strianse, can you move on?

14 MR. STRIANSE: Your Honor, I can move on. The
15 government will get up and say that was a typographical
16 error, ladies and gentlemen. That's all for you to decide.

17 Anything that doesn't fit within their nice, little
18 hokey Readers Digest story of what happened in this case is
19 somebody else's fault; it's a typographical error, it was
20 that incompetent Agent Tutty who didn't hear it correctly
21 and wrote it down wrong. But that's all for you to decide.

22 What about these dueling Iceland photos that you have
23 heard so much about? Remember, the defendant has no burden
24 of proof in this case whatsoever.

25 We showed you pictures from a web site, the hotel

1 where Mr. Richards stayed with Mr. [REDACTED] We also showed
2 you a bill. No receipts of the other hotel that the
3 government wants you to believe have been shown by the
4 government.

5 We had all that debate this morning about the
6 metadata. And in the final analysis, the metadata does
7 nothing to accurately date when that photo -- those shower
8 sequence photos were made Mr. [REDACTED]

9 But Mr. [REDACTED] wants you to believe that he doesn't
10 film himself and he doesn't know how to use a video camera.
11 Then I asked him on cross-examination, well, what about that
12 [REDACTED] thing where you are on the couch with the dog
13 in your lap and you're using the -- oh, yeah, I remember; I
14 did video myself.

15 But, again, those are for you all to decide. You
16 take a look at the photos. You decide if they were taken on
17 a timer. I don't know. It's not our burden to prove that
18 but you take a look at it.

19 Mr. Richards got on the witness stand this morning,
20 denied that he took those photos. He told you that Mr.
21 [REDACTED] had the HP camera, he didn't have the HP camera.
22 Certainly Mr. Richards is not in those shower photos at all.

23 I thought it was interesting last week or two weeks
24 ago when we started, Mr. [REDACTED] wanted to distance himself
25 as much as he could from Mr. Richards. Mr. Richards did

1 everything. He controlled everything. He had access to the
2 computers.

3 Then you hear the video deposition this morning, and
4 he said that he got those shower images from Tim's server.
5 I thought he said he had no access to Tim's server.

6 The Casey At 16, 8-millimeter video that was shown,
7 Mr. [REDACTED] admitted it was never on the Internet. It was
8 never produced in the Middle District of Tennessee.

9 But, again, to protect Mr. [REDACTED] he was never
10 shown the video. You all look at the video. You saw the
11 video. It's obvious that that video was made in different
12 places.

13 Now, the government says, well, [REDACTED] Mass. is not
14 an exotic location. Well, it certainly is not an exotic
15 location. And they have got the burden of proof beyond a
16 reasonable doubt. With all of their resources, they
17 couldn't get an FBI agent to take Pat [REDACTED] up the road
18 from Cape Cod to [REDACTED] Mass. and show him that house, and
19 where an agent could have come in with photos of the house
20 and said, here it is conclusively; we have dated it, we have
21 placed it; it's [REDACTED] Massachusetts? No.

22 They also don't want to talk about Mr. [REDACTED]
23 what I characterize as sort of a multiple choice
24 recollection of these images.

25 If you remember, I asked him about an interview that

1 he did just about a month ago with the FBI, September the
2 13th, 2006.

3 He identifies in one paragraph in the middle of the
4 page an image known as Kylehower. And he says, I was 16.
5 You don't descend a half paragraph -- you may remember the
6 questions of him -- he says that very same image, he was 18.

7 He couldn't even get right in his interviews with the
8 FBI when he turned and where he turned 18. He said he
9 turned 18 in Florida.

10 Well, we know that's wrong from the occupancy
11 agreement that we offered as an exhibit. That's September
12 of '03. He turned 18 in July.

13 He says that he turned 18 in Los Angeles. Well,
14 maybe. But in the very next paragraph of the interview, he
15 says, well, maybe I was 16 or 17 on that trip to Los
16 Angeles.

17 Now, you have seen the big forensic analysis of these
18 Sydney, Australia photos and all the work about the
19 tee-shirts and hand-stamp and everything else.

20 Well, remember his cross-examination. He told the
21 FBI that there were no explicit images made in Sydney,
22 Australia. He said we were on vacation; we were relaxing,
23 we weren't making any contents. Then a few months later, he
24 said, well, maybe we did make some content in Sydney.

25 But that is what the government wants you to rely on

1 as proof beyond a reasonable doubt. I tell you one thing.
2 There is no dispute that Timothy Richards kept Mr. [REDACTED]
3 away from web cam parties. I asked him about that. He
4 acknowledged that.

5 And the question was why? And the answer was that he
6 was underage and couldn't participate. He admitted in his
7 cross-examination that Mr. Richards told him that he was
8 pushing the limits with his Kylesroom site.

9 All of that was confirmed by his recollection of his
10 audio journals. You may remember the questions that I asked
11 him about the audio journals that he maintained in
12 connection with his Kylesroom cite.

13 He remembered distinctly telling the members of his
14 site that Tim Richards would not let him get naked on the
15 Kylesroom site -- that was his word, naked -- and that Tim
16 Richards would not participate in the Kylesroom site.

17 He also acknowledged thanking his members who were
18 assisting with advertising, the Kylesroom site. Made no
19 bones about it. Admitted it.

20 He also complained that he asked Mr. Richards for
21 help. Mr. Richards wouldn't get involved, wouldn't have
22 anything to do with it.

23 He also acknowledged that he told his members, I
24 can't pose nude; if I do, these are the consequences. I'm
25 going to lose my boyfriend and I'm going to lose my site.

1 Does that sound like the advice given by the bogeyman
2 child pornographer Timothy Richards? Does that show
3 somebody that intends to put child pornography underage
4 content on the Internet?

5 And you all go back there and talk about this
6 relationship that existed between Mr. ██████████ and Mr.
7 Richards. They dated for four years. Both sets of parents
8 approved of the relationship.

9 They lived in each parents' home; Massachusetts, then
10 down in Maryland. And, by the way, it's pretty conclusively
11 established, they didn't live in Maryland between the ages
12 of 16 and 17 for Mr. ██████████ It was the ages of 17 and 18
13 because even ██████████ admits they have moved from Maryland
14 down to Florida.

15 But they get the Condo -- Caseyandkylescondo up and
16 running October of '03. They're making money. Everything
17 is fine in the world of Pat and Tim Richards.

18 And ask yourselves, if this is all child pornography
19 and he is so used and abused by Mr. Richards, why doesn't he
20 run to the police department in 2001 and tell them that he's
21 a victim of child pornography? Why doesn't he run to the
22 police department in 2002? Why doesn't he run to the police
23 department in 2003?

24 By that time, he's 18 and he's in it up to his neck
25 with Mr. Richards in their site Caseyandkylescondo. Ask

1 yourselves.

2 It's only in 2004 when this personal relationship and
3 this business relationship hits the rocks that he starts to
4 complain.

5 Now, he told you by his estimation the romance had
6 pretty much ended in December of '03, but he was still
7 making adult content in March of '04. If you remember, I
8 asked him about 14 or 15 different images that he made after
9 he turned the age of 18.

10 Mr. [REDACTED] also admitted having some real animus
11 for Timothy Richards. As late as last fall, 2005, he
12 admitted that he was threatening Mr. Richards.

13 MS. BAKSHI: Objection.

14 MS. DAUGHTREY: Objection.

15 THE COURT: Excuse me. Mr. Strianse, I don't
16 recall that.

17 MR. STRIANSE: It's right in his transcript, if
18 we want to take a look at it.

19 THE COURT: Why don't you approach the bench?

20 (Bench conference begins.)

21 MS. DAUGHTREY: What page is it?

22 MR. STRIANSE: It's on page 99. He said -- as
23 late as fall 2005, he certainly admits --

24 THE COURT: Just a minute. And this was not in
25 a jury-out?

1 MR. STRIANSE: No, that's in front of the jury.

2 THE COURT: Okay. Proceed.

3 MR. STRIANSE: The decision was made not to read
4 the actual blog.

5 MS. BAKSHI: Your Honor, as I recall, that
6 discussion was about a threatening message that defense
7 referred to -- said they recovered from Mr. --

8 THE COURT: I don't care about the background.
9 If you read the transcript, it's in the transcript.

10 MS. DAUGHTREY: This is when we objected because
11 he was leading up to try to introduce this thing.

12 THE COURT: Okay.

13 MS. DAUGHTREY: And we said approach the bench
14 and said if he gets underneath -- if he introduces this,
15 then we're going to ask to talk about what the underlying
16 reason is for his anger.

17 And on page 103, it results with Mr. Strianse says
18 I'm going to throw it away.

19 MS. BAKSHI: You know, he's trying to argue it.

20 MR. STRIANSE: He acknowledged the threat. It's
21 certainly proper to argue something that's in evidence. The
22 threat is in evidence.

23 MS. DAUGHTREY: It's not in evidence.

24 MS. BAKSHI: It's not in evidence.

25 MR. STRIANSE: How is it not in evidence?

1 MS. DAUGHTREY: You asked him, you threatened
2 him; he doesn't say yes or no to that.

3 MR. STRIANSE: You need to read the whole thing
4 in the context of it.

5 MS. BAKSHI: Your Honor, we were not given the
6 opportunity to explore any reasons for -- any potential
7 threats, frankly, are not in evidence.

8 Mr. Strianse asked the question. And that's on the
9 transcript, but there's no response to that because the
10 basis of that threat in our opinion or the basis of whatever
11 communication was because he, if anything, would have been
12 motivated -- that he was upset at the time about the threat.

13 There's no evidence of the threat. There's the
14 question. And, he, I know, is trying to get the benefit of
15 the bargain without paying the price, which is to argue
16 about the threat that never came into evidence because there
17 was -- and there was no opportunity for the government to
18 examine him on that.

19 THE COURT: The transcript says, the question:
20 I'm talking about you lashing out against him online and
21 writing a journal where you threatened him. I was
22 relinquishing some of my anger that I had toward him.

23 MS. DAUGHTREY: And I don't have any objection
24 to him talking about the fact that Patrick was angry, but
25 Patrick never admitted or denied any kind of threats.

1 And, Your Honor, the document that Mr. Strianse was
2 leading up to was all about the threat that was then not
3 introduced. I don't think his testimony about their being a
4 threat is sufficient. Mr. Strianse's question is --

5 THE COURT: Can you move on to something else?
6 You have made your argument. It's in the transcript. I'm
7 not striking it.

8 (Bench conference concludes.)

9 MR. STRIANSE: Let's talk about the other scary,
10 warm body that they offered into evidence, Mr. [REDACTED]
11 And remember, his testimony does not relate to any charge in
12 the indictment. I presume he was advanced as a witness by
13 the government to somehow paint Mr. Richards as a bad guy.

14 He was the one that was 40 years old when he came to
15 work for 18 year old Tim Richards. He wanted you to believe
16 that he was in Minnesota and he was thinking about coming
17 east to take a job, but he had some real questions about
18 whether Timothy Richards was involved in illegal activity.

19 Then Tim Richards evidently tells him on the phone,
20 I'm not involved in illegal activity, and that's fine and
21 dandy for him. He drops everything. I'm sure he had a lot
22 going for him over in Minnesota, but he drops everything and
23 moves to Boston, Massachusetts to work with Mr. Richards.

24 And he identifies for you some second, third
25 generation machine copy of an e-mail between himself, using

1 the screen name, the vulgar screen name Shane U. Putz. Then
2 we find out he adopted the name Shane, and this was an
3 individual that he was accused of trying to molest in some
4 Big Brother program.

5 MS. BAKSHI: Objection. There's no evidence of
6 that.

7 THE COURT: The jury will remember the
8 testimony.

9 MR. STRIANSE: Then they want to associate the
10 other side of the chat with Tim Richards. This is the guy
11 that stays in his room for five months after he receives his
12 severance of a check and don't hit me, you can stay here for
13 five months. That's Mr. [REDACTED]

14 And they want to associate the name with Mr. Richards
15 of Inferango. Take a look at the government's book and all
16 the forensics that they did and all the screen names that
17 they want to associate with Timothy Richards.

18 Take a look at Government's Exhibit 79 and see if the
19 name Inferango is anywhere on that list.

20 I wanted to talk just briefly about this
21 Justinsfriends site that you have heard about. Now, we
22 didn't hear from Justin, didn't hear from Greg Mitchell, but
23 we had all the proxy testimony by everybody else trying to
24 tell you the story.

25 Summer of 2005, Mr. Richards told you he was

1 contacted by Justin Berry, who's a star in his own right on
2 the Internet, an adult porn star, and he wants a little free
3 advice from Timothy Richards because he's having trouble
4 with his site.

5 He can sure film the content, but he can't do the
6 heavy lifting, the HTML code, and it was all messed up. And
7 he wanted some free advice from Tim Richards.

8 It reached a point where Mr. Richards said, hey, this
9 is getting a little deep for free advice; why don't you hire
10 me, and I'll be a marketing and a tech advisor?

11 Now, at that time, that moment in time, in June of
12 2005 that Justinsfriends.com site was a complete site, and
13 it was online. And who had created this biography list of
14 the performers? Well, it was Justin Berry.

15 And you have seen the exhibits of the biographies and
16 the performers, and particularly the one involving this
17 young man, Taylor. And take a look at that biography where
18 Mr. Justin Berry is telling the world that Taylor is 18,
19 almost 19, in his bio.

20 And Mr. Richards is asked to use his expertise in
21 making a preview video for this Justinsfriends site. Mr.
22 Richards cobbles one together out of content created by
23 Justin Berry, not out of content created by Mr. Richards.

24 And he sends it to Mr. Berry. Mr. Berry decides, no,
25 I don't want that; I want the Taylor image in it. That's

1 the one that the government wants to criminalize. And
2 Justin's Preview 2 was born.

3 When you get back there, take a look at Government's
4 Exhibit 90. That's that graphic image, and I hate to direct
5 you to graphic images, but look at the faces of the
6 performers where you have got Justin Berry on the bed with
7 Taylor on the bed.

8 We know Justin Berry was well beyond the age of 18
9 when that was made. See if you can tell, looking at those
10 two, who looks older or if they don't appear to be beyond
11 the age of 18.

12 Let me talk about this forensic proof real quick.
13 The government promised that they proved their case beyond a
14 reasonable doubt with this forensic proof.

15 And you heard Mr. Fottrell testify, very intelligent
16 man, excellent at what he does. You heard from the other
17 FBI agent. She testified, did an excellent job. They are
18 both experts in their field. No question.

19 But when you get back there and ask yourselves, what
20 do they add to the calculus of us trying to make this
21 ultimate determination, what is the age of the performers
22 and did Timothy Richards know the age of the performers,
23 what did they add on the ultimate issue of knowledge?

24 And the answer is going to be they don't add
25 anything, unfortunately. And what they did tell you about

1 the forensics were not in dispute by the defense at all.

2 Mr. Richards admitted that Caseyandkylescondo,
3 Caseyscondo, this Penisclub site were all his sites. He
4 admitted that he came to control that Justinsfriends site in
5 the summer of 2005.

6 He admitted that visitors would lag onto those sites
7 and pay money to access the sites. But the most important
8 thing to take away from Mr. Fottrell's testimony and Ms.
9 Witsman's testimony when they were up here, the two experts
10 from the government, they are simply unable and cannot
11 forensically date when these images were made.

12 Even using all their tools, all their wizardry, which
13 I don't even profess to know, but creation dates, web access
14 logs, these FTP logs that are supposed to show when an
15 administrator may have uploaded an image or downloaded an
16 image, the metadata that we heard a little bit more about
17 this morning from Special Agent Donahue, all those things,
18 they can't forensically date these images.

19 But what did they tell you about the Pat [REDACTED]
20 images? And take a look at your notes and remember his
21 testimony, Mr. Fottrell's testimony. He is unable to tell
22 you that any Pat [REDACTED] image existed in any form on any
23 computer, whether it be these home computers, the servers or
24 otherwise, or any web site before July 30, 2003. That's Mr.
25 [REDACTED] 18th birthday.

1 Mr. Fottrell also candidly admitted regarding Chris
2 Billings, he can't tell you that any [REDACTED] image
3 existed on any computer or any server before February 8th,
4 2002, which was Mr. Billings' 18 birthday.

5 So try as they might and all the expertise that they
6 have got, they add basically nothing to the case because,
7 believe me, ladies and gentlemen, you have seen the reaching
8 that the government has done in this case.

9 If they were able to forensically date any of these
10 images, they would have trumpeted it like a forensic
11 fingerprint. It would have been the keys to the Gulag for
12 Mr. Richards. But, unfortunately, their experts couldn't do
13 it.

14 When you get back there and consider these
15 advertising counts -- let me just say one brief thing about
16 the advertising counts -- look at them and see if there is
17 anywhere in the text of these advertisements where Mr.
18 Richards is telling the world that this is child
19 pornography, that he is some way advertising child
20 pornography. You are not going to find it.

21 There has been some sort of veiled reference, a
22 specter of a young man by the name of Colin. Well, that's
23 all it was in this case, was a specter.

24 You go back there, and you take a look at your
25 evidence. And if you held a gun to your head, you couldn't

1 put a sentence together about Colin and how he relates to
2 this.

3 Look at what the government has got in their big
4 exhibit book. It's a thumbnail of Colin, which is certainly
5 not a sexually explicit image.

6 You have heard no proof about Mr. Richards being
7 connected in any way to any sexually explicit image relating
8 to this man -- young man, Colin. He's one of the
9 Justinsfriends performers allegedly.

10 Now, in trying to evaluate what we have characterized
11 as the crucial question in this case, the crucial question
12 of knowledge and the defendant's knowledge and defendant's
13 intent, I want you all to consider some things.

14 September the 12th, you heard the proof,
15 September 12, 2005, the FBI serves a search warrant on this
16 Hurricane Electric, LA -- I'm sorry -- the BlackSun server,
17 not Hurricane Electric, BlackSun server in Los Angeles,
18 September 12.

19 That was the first witness that we heard from the
20 government, Special Agent Riedel from Los Angeles. Well,
21 Mr. Richards finds out about that. And what does he do?
22 What does the child pornographer do?

23 The very next day, September the 13th, like a good
24 little do-be, he gets on the phone and contacts the FBI,
25 asks what's going on; there's been an interruption in

1 service, when is it going to go back on line, offers his
2 assistance, gives his true name, his true telephone number.

3 In effect, at that point in time, he is making what
4 is for all intents and purposes a 2257 disclosure to the
5 government. If you have any questions, you know where to
6 come ask me about my knowledge of this site, a site where he
7 leased some space, and his performers.

8 Take a look at Defendant's Exhibits 6 when you get
9 back there, which is Mr. Richards' efforts to comply with
10 2257, this record-keeping statute that you have heard a lot
11 about.

12 Now, when you take a look at the one that he created
13 for Justinsfriends, that's the To Be Announced, where
14 there's a typo, No Be Announced, he was at the mercy of
15 Mr. Berry and Mr. Mitchell because it was their site. They
16 were supposed to give the addresses.

17 Now, is that the conduct of a child pornographer who
18 knows that his sites are replete with child pornography that
19 he's going to pick up the phone and talk to the FBI?

20 But there's more. Two weeks later, they search Mr.
21 Richards' home here in Nashville, on September the 26th.
22 He's got literally two weeks to deep six all of the home
23 computers, all the media that is allegedly replete with
24 child pornography that he knows in his bones is child
25 pornography.

1 But what did Mr. Fottrell tell you? There was no
2 evidence whatsoever that anything was tampered on any of the
3 home computers because you have heard them trumpet, gee,
4 there's this symbiotic relationship between the information
5 on the home computer and the information on the server in
6 Los Angeles.

7 So he's got two weeks to destroy everything, to use
8 the most efficient computer scrubber there is, the
9 Cumberland River, throw every computer into the water if he
10 knew it had child pornography on it.

11 Again, is that the conduct of a knowing, willful
12 child pornographer? That's for you all to decide.

13 Now, a couple of more points because I know this is
14 getting too long. The government loves using this
15 incendiary label child pornography and all the hobgoblins
16 that that conjures up.

17 But you heard Mr. Richards testify. He told you, and
18 you may not agree with it, but he was in the adult
19 entertainment business -- that's sort of a euphemism that
20 I'm using -- and he had multiple web sites.

21 But think about the size of these sites that Mr.
22 Fottrell told you about, how massive they were. The
23 government selects 15 or so -- you count them up -- images
24 that they say are child pornography.

25 And what did Mr. Fottrell candidly admit to you on

1 cross-examination? This was a microscopic fraction of the
2 content of all these sites. I think he said it was perhaps
3 one percent or less than one percent, whatever your notes
4 tell you. I think it's another example of the government
5 really stretching, ladies and gentlemen.

6 The judge is going to tell you tomorrow morning about
7 the presumption of innocence and proof beyond a reasonable
8 doubt.

9 And there, ladies and gentlemen, is a chasm, or a
10 canyon, between the presumption of innocence and proof
11 beyond a reasonable doubt.

12 And it's the government's job, not the defendant's
13 job, to build a bridge strong enough from the presumption of
14 innocence to proof beyond a reasonable doubt to carry every
15 one of you across before you could convict Mr. Richards in
16 this case.

17 And I respectfully suggest to you that the government
18 doesn't satisfy its burden by getting up here and saying
19 that Mr. Richards is a liar. They don't build a bridge
20 strong enough by presenting this by proxy, incomplete
21 picture. They don't build a bridge strong enough by not
22 giving you all the pieces to put it together. They don't
23 build a bridge strong enough with some confusing, muddled
24 presentation of the evidence.

25 They don't build a bridge strong enough on guesswork,

1 speculation, the Ouija board that I spoke about in my
2 opening statement.

3 And when you get back there, ladies and gentlemen, as
4 distasteful as this adult content is and what you have had
5 to go through over the last few weeks to sort of hold your
6 nose and look at it, you told us you would do that without
7 bias, without prejudice, to either side, you are going to
8 find when you look at each other, that the government has
9 not carried its burden in this case of proof beyond a
10 reasonable doubt. And it's going to be your duty to acquit
11 Mr. Richards of the charges in this indictment.

12 THE COURT: Thank you, Mr. Strianse. Any
13 rebuttal from the government?

14 MS. BAKSHI: Yes, Your Honor. Ladies and
15 gentlemen of the jury, we have reached the very last part of
16 what's going to happen in this courtroom with the lawyers.

17 Ms. Daughtrey has taken you through each and every
18 count in the indictment and shown how all of the evidence
19 that's been presented proves beyond a reasonable doubt that
20 this defendant committed all 21 offenses involving child
21 pornography.

22 When we started out a couple of weeks ago, we said
23 this is a case about this defendant who is exploiting
24 adolescent boys for sexual gratification and for his own
25 profit.

1 Nothing about anything that the defense has put for
2 the has changed that. The defense has said that this is all
3 about knowledge. Well, there's been an awful lot of
4 evidence about what exactly the defendant knew, should have
5 known.

6 And on this point, as we start to go through all --
7 some of the points that we wanted to highlight to refresh
8 your memory about some of the evidence that you have seen,
9 and also to correct the record about some of the things that
10 the defense counsel just argued to you, I want to just alert
11 you to something that you are going to hear when the judge
12 reads you the instructions tomorrow.

13 And that is that if this case is about knowledge,
14 there are two ways to prove knowledge. And I submit to you
15 that the proof is strong on both counts.

16 The first way you prove knowledge is through things
17 like e-mails and chats where there's some written record of
18 what the defendant was informed.

19 You are never going to be able to tell what really
20 went on in somebody's head, but you can look at a written
21 record and evaluate whether or not it's really likely that
22 he would have known about the minority status of all of
23 these performers.

24 And that's going to be especially important when you
25 start looking at Kyle, when you look at Tory, or [REDACTED]

1 [REDACTED] and, of course, Patrick [REDACTED]

2 And the other thing that I want to alert you to
3 before we even delve into some of the specifics of all the
4 evidence that you have looked at, is one of the instructions
5 that you are going to hear tomorrow. It's about what it
6 means to have knowledge.

7 I said there's one, which is you just knew, you were
8 informed and you knew, that the children were underage,
9 adolescent boys were underage.

10 The second is by something that the judge is going to
11 call deliberate ignorance. And what that means -- and the
12 judge will give you the exact legal terms -- but in a common
13 sense way, what that means is that evidence is presented to
14 you, and the only reason that you refuse to know something
15 is because you deliberately turn your eyes away from it.

16 The information is obvious in front of you. The
17 information that somebody is 15 years old is in an e-mail to
18 you -- 14 years old. The information that somebody is
19 underage is in a chat log.

20 The information that somebody is 18, and, yet, you
21 don't ask for any kind of identification, it's obvious; and
22 yet, you deliberately avoid getting confirmation so that you
23 can pretend -- if you are ever caught and you are ever
24 called to court, you can pretend you didn't know.

25 That is what deliberate ignorance is about. And you

1 can as a matter of law find that this defendant had the
2 requisite knowledge to convict him of each and every child
3 exploitation offense charged in this indictment if you
4 believe that he knew or he chose not to know, chose to be
5 deliberately ignorant, of the facts that were obvious.

6 The children depicted in these and all of the child
7 pornography that we have shown you, they were minors and he
8 knew they were minors.

9 Let me start by highlighting some of things that Ms.
10 Daughtrey talked about, and, as I said, correcting some of
11 the misinformation that may have come across in the defense
12 argument.

13 Ms. Daughtrey mentioned when she was talking about
14 these record-keeping requirements that they seem like kind
15 of a relatively small part of the proof, almost
16 administrative.

17 But in reality, the 2257 charges end up being
18 incredibly important because they are relatively easy to
19 comply with.

20 If you are the producer, you keep the records -- and
21 the judge will instruct you on the exact terms of the law --
22 but if you produce pornographic content, it doesn't matter
23 if the performer is 17 or 70, the whole point is to make the
24 producer keep records, to check ID and keep records so the
25 FBI can later look at those records and make sure that

1 everybody in every pornographic video is an adult.

2 The law is very simple. Certainly if you go to a
3 course, it's very, very simple. The primary producer has to
4 keep records, and anybody who's redistributing that content
5 has to list the address, the accurate physical address,
6 where those records are kept. It's not complicated.

7 THE COURT: Ms. Bakshi, I'm going to limit you
8 to rebuttal, to responding to defense argument.

9 MS. BAKSHI: Of course. This -- the defense
10 counsel talked a lot about how it was that he had no idea
11 that the performers on the various web sites, including
12 Justinsfriends.net, on Penisclub, on Caseyandkylescondo and
13 Caseyscondo, that they were minors, and that the images
14 depicted children, adolescent boys, under the age of 18
15 engaged in sexually explicit conduct.

16 You can look at the proof that Ms. Daughtrey showed
17 you related to 2257. You can remember that the defense
18 introduced very elaborate proof of how it was that this
19 defendant was able to comply with 2257. He did it very well
20 when it came to his Collegeboys site.

21 When it came to his 18 year old performers, he showed
22 records saying, okay, here's the physical address, here's an
23 example of an ID. He certainly knows how to do it.

24 And yet -- and he talks about these three file
25 cabinets of records that he keeps. That was in his

1 testimony. He keeps -- he talks about all of that material.

2 And yet, where are the three for Taylor, for Patrick
3 [REDACTED] for [REDACTED] where are those? Wouldn't you
4 think, as Ms. Daughtrey said, that somebody who goes to the
5 extraordinary length of bringing veterinary records of a
6 dog's birthday --

7 THE COURT: Ms. Bakshi, I'm going to stop you at
8 this point. The defendant has no burden to bring in any
9 evidence whatsoever before this jury, as you well know.

10 MS. BAKSHI: Thank you for that correction. I
11 should have said -- I apologize. I should have said, of
12 course, the defendant has no burden. The burden is entirely
13 ours.

14 However, I'll ask you to use your common sense in
15 evaluating whether or not he was -- he didn't know how to
16 comply or he chose not to because doing so would expose him
17 to the truth, that all of these people, Taylor, Chris
18 Billings and Patrick [REDACTED] were minors in the images
19 that are depicted in all of the defendant's web sites.

20 The defense counsel on -- in his closing argument
21 talked a lot about a sincere and honest belief that this
22 defendant was trying very hard to comply.

23 I submit to you there was nothing sincere about this
24 effort to comply. He knew full well how to comply with
25 2257. He showed you how he knew how to comply with 2257.

1 Yet, when it came to the Penisclub site that depicted
2 child pornography involving Christopher Billings, also known
3 as Tory, and Patrick [REDACTED] there was no physical address
4 listed. He knows how to do it. He chose not to.

5 And you can use your common sense to infer that that
6 might have been because he knew that if he put the address
7 there, it might bring the FBI knocking.

8 Likewise, on the Justinsfriends site, this defendant
9 keeps talking about how he was relying on his
10 co-conspirators to provide documentation about Taylor, about
11 all of children on this site.

12 Well, let's look at that. You saw e-mails associated
13 with the correspondence from one of those co-conspirators
14 saying that Taylor is underage. It's all child porn anyway.
15 That's clear as day.

16 Now, this defendant says, he didn't read it. Again,
17 I'll do you use your judgment and your common sense to
18 evaluate the credibility of that statement that he just so
19 happened to have deleted the e-mail without reading from his
20 life-long friend and business partner, that just so happens
21 to have very important information.

22 Then we turn your attention to the chat that you have
23 seen so many times, which is a chat that perhaps you can use
24 your judgment in evaluating whether or not the defendant was
25 expecting to see that in this trial.

1 That chat did not come from this defendant's
2 computer. It came from one of his co-conspirator's
3 computer, the person he was chatting with, Greg Mitchell.

4 And that chat says -- talks about the fact that
5 Taylor is underage again. And that's something that this
6 defendant responded to. He can't say I deleted it without
7 reading. There's evidence of him as Euro Casey responding
8 and talking about it.

9 And those two exchanges, those are in July of 2005,
10 and yet when the servers are seized in September of 2005, a
11 full few months later, has the defendant done anything about
12 it? No, he is on notice.

13 So with respect to 2257, the defense argument that he
14 made a sincere and honest effort to comply, I'll ask you to
15 consider in your judgment and your common sense whether or
16 not that was really sincere.

17 Also, in reviewing the evidence, Ms. Daughtrey
18 pointed out that there is content related to this defendant
19 and Mr. [REDACTED] on the Justinsfriends site.

20 This is relevant in two respects that relate to what
21 the defense counsel said. One is the defense has submitted
22 throughout Justinsfriends was completely done, it was a
23 complete site by the time Mr. Richards got involved in it
24 and by the time that tape-recording was made.

25 However, you see on the Justinsfriends site there's

1 actually material involving Mr. [REDACTED] and this defendant.
2 And that is the video that we have talked so much about,
3 JF_fucking. It wasn't complete. Mr. Richards added that
4 because he was operating that site.

5 Now, was he also relying on Justin Berry to provide
6 information about Patrick [REDACTED] age? Justin Berry had
7 nothing do with Patrick [REDACTED] This defendant had
8 everything to do with Patrick [REDACTED]

9 With respect to the 2257 charges, it's absolutely
10 incredible that this defendant could have reasonably relied
11 on his co-conspirators; he knew no records existed. He was
12 willfully ignorant by not checking ID.

13 By not asking for those IDs, he was willfully
14 ignorant. And he knew that Taylor was underage, and he knew
15 that -- because he produced content that Patrick [REDACTED]
16 and that JFfucking video was underage, and he chose not to
17 produce -- excuse me -- he chose not to collect
18 identification.

19 He chose not to put the -- his address on file or any
20 address on file because that would encourage the FBI to come
21 and check him out. Then they would find out that he was
22 using minors in sexually explicit conduct. In these ways,
23 that 2257 is an incredibly important charge.

24 The defense has argued that the fact that the
25 defendant lied is not relevant. I submit to you that the

1 fact that he lied about some things and got caught in those
2 lies may inform your evaluation of his credibility.

3 You may ask yourself does an innocent person lie, do
4 they make up ridiculous stories, do they omit facts
5 selectively? I submit to you that an innocent person
6 doesn't.

7 An innocent person has truth on his side, and he just
8 keeps talking. And it all seems to make sense because the
9 truth does make sense. It's simple, and it's reasonable.

10 Ms. Daughtrey pointed out some of the lies that this
11 defendant told with respect to Iceland. And defense counsel
12 countered in his closing argument saying that that was
13 perhaps somewhat insignificant.

14 The trips to Iceland and Australia are especially
15 significant because in those cases, while, again, I would
16 submit to you that Patrick [REDACTED] is a far more credible
17 witness than the defendant, who has a lot to lose in this
18 trial, compared to Patrick [REDACTED] who has really nothing
19 to gain or lose -- but the trips to Iceland and Australia
20 are especially important because those trips and the dates
21 of those trips, there's nothing subjective about them.

22 The border-crossing records show that those trips --
23 the only trip that this defendant and Patrick [REDACTED] ever
24 played to Iceland, that trip was in 2003, early 2003, before
25 Patrick [REDACTED] was an adult. He was a minor.

1 The trips to Australia show that that trip, the only
2 trip that Patrick [REDACTED] ever made to Australia, the only
3 trip we know of that the defendant ever made -- ever took to
4 Australia, and certainly the only trip they took together,
5 that occurred when Patrick [REDACTED] was a minor.

6 Those trips and the lies about those trips become
7 especially important in evaluating the credibility of this
8 defendant.

9 He can't fudge the dates of the Iceland trip. The
10 border crossing records show what days they were. He tried.
11 He tried to slip in the hotel records that really talked
12 about that last night.

13 And although the defense counsel has said something
14 about how the government didn't produce any evidence about
15 the first hotel, I think actually the defendant explained
16 that himself. He said they stayed at -- used some vouchers.
17 That's probably true.

18 Then they planned to leave, and there was a snow
19 storm, and they had to come back for the last night. That
20 all seems to make sense, which the government doesn't have
21 any issue with that.

22 The thing that the defendant left out was on the
23 first part of trip, he produced child pornography. And he
24 produced it with those Iceland photos that we showed him
25 with.

1 And, again, the government absolutely bears the
2 burden of proving all of the elements of all of these crimes
3 beyond a reasonable doubt.

4 However, you can evaluate the credibility of the
5 defendant in this case. You can evaluate the way he reacted
6 to material that he was expecting and material that he was
7 surprised with.

8 Now, if you remember, when he was confronted with the
9 information about Iceland, he didn't have a very smooth
10 explanation for it.

11 He didn't have a ready-made explanation like he did
12 for Sydney, which he was expecting. He didn't have --
13 didn't have an explanation saying, oh, we took some pictures
14 in Iceland, took some pictures later. He didn't have any of
15 that because he wasn't expecting that.

16 And you can consider in your evaluation of
17 credibility, do honest people get flustered when confronted
18 with new information or is there a reasonable, honest and
19 innocent explanation for those things that they can just
20 deliver the same way they delivered the testimony that they
21 prepared.

22 When it came to Iceland, there's not much for the
23 defendant to work with. The border crossing records show
24 that they were there when Patrick [REDACTED] was still 17;
25 that there are two people. One of them is in the image.

1 With the information about the camera and how it
2 wasn't set to take automatic pictures, it's clear one person
3 is in the image, Patrick [REDACTED] one person is taking the
4 picture. There's two people on the trip. It's the
5 defendant who took those pictures. There's no question
6 about that.

7 So you can consider the fact that that before the
8 defendant knew about this information, he said -- he said in
9 the context of that F-u-c-k-i-n-g video, oh, there was no
10 pornographic videos when we were in Iceland, there was no
11 pornographic pictures, right, because he knows the border
12 crossings are going to show that Patrick was 17.

13 So he says that. And later, when he's confronted
14 with very strong proof that indeed he did take pictures,
15 what does he say? He doesn't have a very good explanation.
16 There's nothing to explain it away this time. He didn't
17 have time to prepare an explanation that would smooth talk
18 his way out of it.

19 And the Sydney examples are also pretty useful in the
20 same respect. We talked about the shirts early in the
21 testimony. We talked about the fact they were wearing the
22 shame shirts. So when he testified this morning, he came
23 back with an explanation for that as well.

24 He had had time, perhaps, to recall what was going
25 on, and he said, oh, well, we had very few shirts, we were

1 wearing the same things. And I guess he saying either they
2 staged reenactment or perhaps there's just coincident, they
3 had so few clothing, they were wearing the same thing in the
4 Sydney photos.

5 And several months later -- it is several months.
6 It's November 2002 until after July 2003, same haircut, same
7 shirts, okay. But he wasn't expecting the hand stamp. He
8 hadn't seen that. That stuff is in evidence, but he hadn't
9 seen it.

10 And you didn't hear any explanation for it beforehand
11 because he wasn't expecting it. There's no reason that they
12 would recreate a faded hand stamp. No.

13 What happened was they went to the Sydney aquarium.
14 They went to the zoo, and then in short order, that day,
15 maybe the next day, the hand stamp sort of faded, they
16 created those pornographic videos. And that was in November
17 of 2002 when Patrick [REDACTED] was a child, was still a
18 minor.

19 The defense has said -- and I hope I'm getting this
20 right, there is a lot of information coming at us -- I
21 believe it was in the context of the long video we showed
22 you, the Casey At 16 video that's in 8-millimeter format,
23 and there was some discussion about whether or not it was
24 credible that this defendant was videotaping the beginning
25 of that in [REDACTED] Massachusetts, and continued to film it

1 someplace else or splice and dice it.

2 So there's a couple of details that need
3 clarification on this that were make clear that the
4 defendant was lying when he talked on -- when he discussed
5 this Casey At 16 video when he testified in this courtroom.

6 A couple of things. One is, as Ms. Daughtrey
7 explained, Patrick [REDACTED] never went to that house as an
8 adult. So this defendant has a problem. He knows that he
9 can -- that that house is associated with Patrick as a minor
10 and only as a minor.

11 He knows the video shows the front of the house. So
12 he's got to explain away the rest of it. Well, he relies on
13 the same sort of thing that he talks about with the Sydney
14 videos. Oh, well, we filmed the rest, we -- maybe somebody
15 spliced it and diced it.

16 Well, do you recall his testimony, he talked about
17 using an editing software program? A software? It's an
18 8-millimeter tape. It's not a piece of computer equipment.

19 Now, Ms. Daughtrey gave him the benefit of the doubt
20 and said, well, it's an 8-millimeter tape, you talked about
21 digital software, software is for a computer. She didn't
22 say all this, but she gave him a chance and said what tools
23 did you use.

24 He was perhaps surprised by the question, and he
25 didn't have an answer. How does it make sense -- you can

1 consider in your evaluation of his credibility, how does it
2 make sense that some unknown person -- I guess from his
3 house -- goes in, applies digital editing software to
4 something that's not computerized, and then it ends up in
5 the defendant's own filing cabinet?

6 It's ridiculous. It is ridiculous. Innocent people
7 do not give you ridiculous situations. There's a much
8 simpler explanation.

9 The defendant and Patrick [REDACTED] were engaged in
10 sexually explicit conduct when Patrick was a minor in that
11 house. The entire video is filmed in that house.

12 And this defendant brought it from Massachusetts to
13 Nashville, and he kept it in his filing cabinet. That makes
14 sense. That is reasonable. That is simple.

15 I want to take this opportunity just to correct the
16 record as best I can or as best I can recollect. I
17 believe --

18 THE COURT: Ms. Bakshi, I'm going to ask you to
19 wind it up. You have been at it almost as long as the
20 defense argument.

21 MS. BAKSHI: Yes, Your Honor. I do want to take
22 a few moments to respond to some of the things the defense
23 counsel says, and one of them relates to this Casey At 16
24 video.

25 I believe that the defendant accused Patrick [REDACTED]

1 of misstating when it was that he -- when it was that he
2 turned 18. And I'll ask you to refer to your notes in that,
3 and I think that your notes will reflect the fact that Mr.
4 ██████ testified that he was living in Maryland, and then
5 he was eventually moving to Florida.

6 When he left Maryland, he was 17. He turned 18 on
7 that long trip where they went out to California, and he
8 returned, and he went to live in Florida for a few months.

9 There is nothing inconsistent about that testimony.
10 There is nothing that belies any kind of lack of credibility
11 for Mr. ██████

12 This defense counsel and defendant have -- excuse me.
13 The defense has suggested that Mr. ██████ is motivated by
14 a threat, and I'll ask you to review your notes and see if
15 there was any evidence -- I'm not talking about defense
16 counsel's questions, but any evidence that any kind of
17 threat or if Mr. ██████ seemed like a young man who was
18 coming into his own and trying to tell the truth.

19 You heard him. This defense -- the defense had two
20 opportunities to cross-examine him, and there was no
21 evidence of any kind of malicious bias. This is a man who's
22 telling the truth. And you know that both because you could
23 have evaluate him, because what he was saying is --

24 MR. STRIANSE: Your Honor, I object to the
25 characterization of the witness telling the truth.

1 THE COURT: That's for the jury to determine.

2 MS. BAKSHI: Thank you. Thank you for that
3 correction.

4 You can evaluate his credibility from the way that he
5 seemed to you when he was speaking, from the way that the
6 pictures match up to his chronology, from the way that the
7 defendant's own history page talks about how they met when
8 they were 14; from all of the evidence corroborating his
9 story.

10 Also, just a word or two about one of the other
11 statements that the defense counsel made in his closing
12 argument.

13 He talks about are these the actions of a -- are
14 these the actions of somebody who is -- I can't remember
15 the -- what the word he used, but something about child
16 pornographer and something about a bogeyman, and what he was
17 saying, I think, was that he call the FBI.

18 And he also warned Patrick [REDACTED] don't put child
19 pornography on your web site. But if you review the records
20 of Mr. Fottrell's testimony, I asked him specifically, was
21 the web site that that testimony was about, was that live
22 feed, and does that mean that it gets projected right away.

23 This is not somebody trying to protect Patrick
24 [REDACTED] from child pornography. This is somebody who
25 doesn't want to get caught.

1 He started out just the way Kent ██████ said, that
2 he started out doing child pornography sites, moving them.
3 He got more sophisticated. He figured out he could take
4 adolescent boys kind of close to 18, film them. They look
5 good. They look young. Seems marketable to him.

6 Wait until they are 18, put them on the site; they
7 are still child pornography. But if you use live feed, that
8 goes out right away. If you do it when you are 16 and 17,
9 people know right away. You can't store that for later.

10 That is in the evidence about Mr. Fottrell's
11 testimony, and I think that that will explain away this
12 supposed indication of Mr. Richards' good faith.

13 Likewise, with respect to him calling the FBI when
14 the servers were searched, this is a defendant who has shown
15 in many ways that he thinks he can talk his way out of
16 anything. He is very bold, and I will give him credit for
17 that.

18 But -- and he has done a lot of clever things to
19 avoid getting caught and to cover his tracks. Not
20 everything. He left some clues for us and a few loose ends.
21 But he has confidence, over-confidence, and he just thought
22 he could talk his way out of anything.

23 Remember, this is the same defendant who complained
24 about copyright violations involving child pornography.

25 THE COURT: Ms. Bakshi, can you wind this up and

1 limit it to responding to the defense arguments?

2 MS. BAKSHI: Yes. I'll say just a few words
3 about the defense counsel's argument about Tory. As you
4 will recall from the evidence presented, the Paint Tory,
5 Torry DVD and the other material involved a road trip from
6 the east coast to Las Vegas. That is a very long drive.

7 One might expect -- and you can use your judgments as
8 to whether or not there might have been any conversation
9 about whether Mr. Billings was still in high school, lived
10 with his parents.

11 This defense counsel has argued that he had no idea
12 because, in part, he was smoking tobacco, and there were
13 people checking ID at the conference.

14 But you heard in closing argument that Tory got them
15 thrown out of the conference. He's known him for years.
16 They said they were in the same high school group. All of
17 these things together, you can use your judgment to figure
18 out whether or not this defendant knew or was, at a minimum,
19 deliberately ignorant of the fact that Tory was indeed a
20 minor in January of 2002.

21 Defense counsel has also talked a lot about Patrick
22 [REDACTED] role in these crimes. When you hear the judges
23 instructions you will not hear the judge say anything about
24 the fact that a victim consented to his own exploitation as
25 being a defense. It simply isn't.

1 The fact that this defendant chose to prey upon
2 adolescent boys made his crime easier. That's true. It is
3 easier to prey upon adolescents than it is perhaps other
4 victims. But it has nothing to do with the law in this
5 case.

6 It is irrelevant. It is irrelevant. And although
7 defense counsel has asked questions about was Patrick
8 ██████████ worried about being a co-conspirator and being
9 charged, the evidence is clear Patrick ██████████ saw himself
10 rightfully as a victim.

11 The fact that he consented to this explanation when
12 he was a 14 year old boy, 15 year old boy, 16 year old boy,
13 17 year old boy, it makes no difference.

14 Likewise, defense counsel talked about an honest and
15 sincere attempt to comply with 2257.

16 MS. HODDE: Your Honor, we have been here. This
17 is repetitive and this is again beyond the scope.

18 THE COURT: It's responsive, but make it short.

19 MS. BAKSHI: I will. There is no indication
20 there was anything honest and sincere about his attempt to
21 comply with 2257. And that's telling of his intent on all
22 of these different crimes against children.

23 In closing, this case remains a case about this
24 defendant who chose to exploit adolescent boys for his own
25 personal gratification and for profit. Nothing, none of the

1 red herrings, none of misstatements, nothing changes that
2 fact.

3 Thank you.

4 THE COURT: Thank you, Ms. Bakshi. All right.
5 Members of the jury, we're going to let you go this
6 evening -- it's about 20 until 5 -- and have you back fresh
7 in the morning for instructions.

8 You still have a very important piece to hear, and
9 that is the instructions that apply to your consideration of
10 the facts of this case in the context of the arguments that
11 you have just heard.

12 So I'll repeat my same instruction. Please do not
13 talk about the case at home with anyone. Do not talk about
14 it amongst yourselves.

15 Do not view any news coverage, if there is any, or
16 listen to any news coverage. Do not do any research on your
17 own.

18 We'll see you back at 9:00 in the morning for
19 instructions. Thank you.

20 (Jury exits.)

21 THE COURT: All right. I'm going to ask you
22 all -- I'm going to have brought in to you the revised
23 indictment -- make sure that I have removed the correct
24 counts from the revised indictment, and I'm going to ask you
25 tonight, if you will, to go over all this evidence and make

1 sure that everything is here that needs to be here.

2 Now, what have you all -- have you all discussed
3 whether or not we're going to send back DVD players or what
4 we're going to send back with the jury? Have you all talked
5 about that?

6 MS. HODDE: No, Your Honor. We have not talked
7 about it.

8 THE COURT: Okay. What does the government
9 request, if anything? Are you requesting any kind of
10 machinery to go back or just the evidence and give them --
11 let them listen to it if they request the opportunity to
12 listen or watch anything?

13 MS. DAUGHTREY: Your Honor, I was checking in
14 earlier today to see if we could he provide equipment for
15 them to take back in case they want to listen to those
16 exhibits. I have not heard whether or not our office is
17 able to provide that.

18 And the answer may be there, I just haven't heard it
19 yet. And we would like to be able to send that back with
20 them in case they wish to review any of the evidence.

21 MR. STRIANSE: Your Honor, I like the latter
22 suggestion where we wait for the jury to ask to see
23 something.

24 THE COURT: We've got DVDs and VCRs and then an
25 audio tape of some sort?

1 MS. DAUGHTREY: Your Honor, what we have got is
2 digital DVDs and CDs. Then we have an 8-millimeter tape. I
3 actually have a video camera that is clean -- it belongs to
4 me -- that we could send back with them.

5 In terms of the -- there's no VHS. I think we have
6 agreed that the VHS of Patrick [REDACTED] would not go back to
7 them, but the DVDs would need to be played on some sort of
8 computer or DVD player.

9 THE COURT: So would our DVD player work?

10 THE CLERK: As long as it's formatted as a DVD.

11 THE COURT: Is it formatted as a DVD or is it
12 somehow only for use on a computer?

13 MS. DAUGHTREY: We don't know if it would run on
14 DVD player or not. We can certainly test it and we would be
15 glad to do that.

16 THE COURT: Okay. Why don't you test it so at
17 least we know what we have? And then we'll talk more in the
18 morning about -- I am inclined not to send back any
19 equipment.

20 They have seen most of this stuff endlessly, and so
21 I'm inclined not to send back equipment, and if they request
22 the opportunity to be able to review something, provide them
23 with equipment. That's what I'm inclined to do.

24 MS. DAUGHTREY: Can we let them know that they
25 can make that request if they so desire?

1 THE COURT: Yeah.

2 MS. DAUGHTREY: Okay.

3 THE COURT: Are there any -- anything resulting
4 from the closing arguments that anybody wishes to put on the
5 record? I never had so many objections in closing arguments
6 in my career. Anything?

7 MR. STRIANSE: No, Your Honor.

8 THE COURT: All right. Very good. All right.
9 We'll see you back at 9:00 in the morning. And, again, if
10 you all would go over all the evidence, and I'll send in the
11 indictment? We are in recess.

12 (TRANSCRIPT CONTINUED IN VOLUME X.)

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