

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 VIII
7 TIMOTHY RYAN RICHARDS)

8 TRANSCRIPT OF PROCEEDINGS
9

10
11 BEFORE: THE HONORABLE ALETA A. TRAUGER
12 DATE: OCTOBER 20, 2006
13 TIME: 9:00 A.M.
14

15 APPEARANCES:

16 FOR THE GOVERNMENT: CARRIE DAUGHTREY
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Nashville, Tennessee
18 KAYLA BAKSHI
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Washington, D.C.
20 FOR THE DEFENDANT: PETER STRIANSE
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REBUTTAL WITNESS INDEX

PATRICK [REDACTED]

Direct Examination by Ms. Daughtrey 1320

Cross-Examination by Mr. Strianse 1326

1 THE COURT: Good morning. I understand there's
2 a preliminary matter?

3 MR. STRIANSE: Morning, Your Honor.

4 THE COURT: Good morning.

5 MR. STRIANSE: I was wondering if the witness
6 could be instructed to not say that these photos were in the
7 custody of the [REDACTED] Police Department?

8 THE COURT: That's not necessary, and we don't
9 want that in the trial, right? Have you not instructed him
10 to say that?

11 MS. DAUGHTREY: I have instructed him not to
12 talk about that on direct questioning. So if the defense
13 opens the door, I think that's appropriate.

14 MR. STRIANSE: Well, I mean, what constitutes
15 opening the door?

16 THE COURT: We'll deal with that when we get to
17 it.

18 MS. DAUGHTREY: That will be toward the end of
19 my questioning, so it would be easy to redact it if there's
20 any problem with it.

21 THE COURT: Mr. [REDACTED] do you understand you
22 are not to talk about anything about the police department
23 or any investigation that took place in Massachusetts; you
24 understand that?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 THE WITNESS: Yes.

3 THE COURT: All right. So are we ready to
4 begin?

5 MS. DAUGHTREY: Yes. After this witness, I also
6 have another matter that I would like to bring to the
7 court's attention, but it does not need to be videotaped.

8 THE COURT: Okay. All right. So you want me to
9 make another entrance or do you want to just start?

10 THE CLERK: If there's something you want muted
11 from the jury, push the button on top.

12 MS. DAUGHTREY: Won't we have to push this
13 button over here, too?

14 THE COURT: To get off the record --

15 MR. CHAMBERLAIN: To get off the record, press
16 it, and it will turn red when it's muted.

17 THE COURT: That will mute everything?

18 MR. CHAMBERLAIN: That mutes every microphone
19 when we start recording.

20 THE COURT: Okay, very good. Okay. And what's
21 the number of this exhibit?

22 MS. DAUGHTREY: This is number 112. Can you
23 make sure of that on the very last page?

24 MS. BAKSHI: That's correct.

25 THE COURT: Okay. Mr. Chamberlain, if you could

1 -- you want to start the video rolling?

2 MR. CHAMBERLAIN: Yes.

3 MS. HODDE: Is this a new exhibit number?

4 MS. DAUGHTREY: No.

5 THE COURT: Wait. Before we start --

6 MS. HODDE: You have had a witness identify this
7 document as five pages. It -- you used it to cross-examine
8 Mr. Richards.

9 MS. DAUGHTREY: He didn't identify them.

10 MS. HODDE: You marked it into evidence, though.

11 MS. DAUGHTREY: They are marked for
12 identification only.

13 THE COURT: Wait. But you are now using
14 additional photos?

15 MS. DAUGHTREY: Full set, yes.

16 THE COURT: I think you need to mark this as an
17 A different exhibit number so the record is clear that there
18 was one that was marked for identification that had only
19 five pages and now you're dealing with another one.

20 MS. BAKSHI: That's fine. Do you want me to get
21 a exhibit number?

22 THE COURT: So what's the next number?

23 MS. DAUGHTREY: How about 120? I think it may
24 skip one or two, but I think 120 is safe. I know we don't
25 have that one.

1 THE COURT: 118 is the chat logs. I think 118
2 may be the last one.

3 THE CLERK: That's what I was thinking.

4 MS. DAUGHTREY: So this would be 119.

5 THE COURT: 119.

6 MR. STRIANSE: Are there any other exhibits for
7 this witness?

8 MS. DAUGHTREY: Not unless you open the door for
9 the [REDACTED] police.

10 THE COURT: All right. Mr. Chamberlain, would
11 you start it rolling?

12 MR. CHAMBERLAIN: Yes, Your Honor.

13 THE COURT: All right. Good morning. We are
14 here on the government's continued rebuttal evidence, and
15 they have called as their next witness Patrick [REDACTED]
16 Mr. [REDACTED] you testified before, and you are still under
17 oath. Do you understand that?

18 THE WITNESS: Yes.

19 THE COURT: All right. And I will tell the jury
20 that there is a slight delay in terms of this -- taking this
21 testimony by video. All right. Ms. Daughtrey, are you
22 ready?

23 MS. DAUGHTREY: Yes, I am.

24 PATRICK [REDACTED]
25 having been previously sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. DAUGHTREY:

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

6 A You're welcome. Good morning.

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

9 A Correct.

10 Q All right. And the delay is because of the video
11 conferencing, and you understand that?

12 A Correct.

13 Q All right. And that you understand you are still
14 under oath from before. Is that correct?

15 A Yes.

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

19 A Tim Richards.

20 Q And was there anyone else that went with you to
21 Iceland?

22 A No.

23 Q How did you get to Iceland?

24 A Using Iceland Air.

25 Q So you flew to Iceland?

1 A Yes.

2 Q Okay. Do you have any fear of flying at all?

3 A Yes.

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

6 A The only occasion.

7 Q Do you remember how old you were when you went to
8 Iceland this one time?

9 A Between 16 and 17.

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

12 A [REDACTED] Maryland.

13 Q And was that with Mr. Rich's parents?

14 A Yes.

15 Q Did you pay for the trip to Iceland?

16 A No.

17 Q Who paid for the trip?

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

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

21 A We stayed at the Hotel Reykjavik.

22 Q Was that the only hotel you stayed in?

23 A No.

24 Q Okay. And can you explain why you stayed in a second
25 hotel?

1 A When it was time for us to leave, we got to the
2 gates, we went through customs, and we were waiting for the
3 plane to board.

4 Apparently there was a big snow storm down on
5 Maryland on the east coast, so the flight was canceled. We
6 went through customs again, and we picked a cab, and we
7 went to another hotel to wait a few days.

8 Q Do you recall which hotel that was?

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

10 Q Was it the same hotel that you originally stayed at?

11 A No, it was different one.

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

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

16 Q But you didn't have anything do with the financial
17 transactions regarding the payment for the hotels?

18 A No.

19 Q All right. I would like to go through Exhibit 119.
20 It's a new exhibit that the government is introducing, and
21 we're going to show you one by one each of these pictures.
22 There's about ten pictures. And I'm going to ask you if you
23 recognize these pictures.

24 This is the first picture of the series. Do you
25 recognize that?

1 A Yes.

2 Q And what is that picture of?

3 A Picture of a shower curtain in Iceland.

4 Q Was it the first hotel or second hotel that you
5 stayed at?

6 A The first hotel.

7 Q Ms. Bakshi, if you could go ahead and put up the
8 additional ones. Is that also from the first hotel?

9 A Yes.

10 Q And who is that in the picture?

11 A Me.

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

15 A Okay.

16 Q It's a little difficult to do this on the video
17 camera. If you could show the next picture, please, and
18 continue with the next picture?

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

20 THE WITNESS: Yes, I can.

21 BY MS. DAUGHTREY:

22 Q I think that one is upside down. And these are the
23 same series of pictures?

24 A Yes.

25 Q Okay. Could you show the next picture, please? It's

1 like looking in a double mirror to get these in front of you
2 correctly. I believe this is the last picture. Do you
3 recognize all these pictures?

4 A Yes.

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

6 A Including the last picture, they were all taken at
7 the same hotel.

8 Q Okay. And the last picture, was that on a bed in
9 that hotel?

10 A Yes.

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

12 A Yes.

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

14 A Yes.

15 Q And who took these pictures of you?

16 A Tim did.

17 Q And that's Mr. Richards?

18 A Correct.

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

20 A Yes.

21 Q Did you ever take pictures of yourself?

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

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

25 A Yes.

1 Q Did you ever use a digital camera to take pictures of
2 yourself, if you recall?

3 A If one was available, yes.

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

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

9 Q Okay. And in using the timer, would you have to
10 reset the timer for each different picture?

11 A You would have to go over to the camera and press the
12 button again.

13 Q For each individual picture?

14 A Yes.

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

17 A Yes.

18 Q And was that videotape taken at the same period of
19 time that these photographs in the shower and on the bed
20 were taken?

21 A Yes.

22 Q All right. And they were taken on the same trip?

23 A Yes.

24 Q Okay. And where did you get this particular set of
25 photographs that we've looked at today as part of Exhibit

1 119?

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

3 Q Who would put these images on the computer?

4 A Tim would. I would only upload stuff for my own
5 personal web site.

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

8 A Yes.

9 Q Okay. I believe that's all the questions I have.
10 Thank you very much.

11 THE COURT: Cross?

12 THE WITNESS: You're welcome.

13 MR. STRIANSE: Judge, do you want me to stay
14 here to ask the questions?

15 THE COURT: No, I think you should come over
16 here, Mr. Strianse.

17 CROSS-EXAMINATION

18 BY MR. STRIANSE:

19 Q Good morning, Mr. [REDACTED]

20 A Good morning.

21 Q The photos that you have just identified in
22 Government's Exhibit 119, those photos were never on the
23 Internet. Is that correct?

24 A Correct.

25 Q And those photos had been in your possession,

1 correct?

2 A I downloaded them off the server, but I never
3 actually had them.

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

6 A Yes.

7 Q And I think you told Ms. Daughtrey that you'd used a
8 digital camera to take photos of yourself?

9 A Yes.

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

12 A Not of me. I recorded Tim.

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

14 MS. DAUGHTREY: Objection. I thought we were
15 limiting this to the Iceland pictures, and I thought that
16 was specifically what it was that we were limiting this
17 examination to.

18 THE COURT: We're going to go off the record a
19 minute.

20 (Recording is stopped on video.)

21 THE COURT: That's my understanding as well.

22 Although she has asked if he ever -- tell me your argument.

23 MR. STRIANSE: My argument is this. We had put
24 into evidence a defense exhibit which was Kyle_joshower.

25 It's the one with the dog that was shown several times the

1 other day, where he is seen operating a video camera remote
2 control, and that's what my question is about.

3 THE COURT: Seems to me that's proper
4 cross-examination given the area that you explored with him.
5 You asked him if he had ever taken photos of himself.

6 MS. DAUGHTREY: Your Honor, the reason that I
7 did that was because the defendant's position is clearly
8 going to be that he took these images of himself in Iceland.
9 I wasn't trying to open the door to any other images.

10 THE COURT: I think you have opened the door, so
11 I'm going to allow you to ask that question. Let's not go
12 any further than that. You are not going into any other
13 piece of evidence?

14 MR. STRIANSE: No, that was it.

15 (Recording resumes.)

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

17 BY MR. STRIANSE:

18 Q Mr. [REDACTED] let me ask you that question again.

19 Are you familiar with a video that's entitled

20 Kyle_j-a-c-k-offshower that was made, I believe, in [REDACTED]

21 [REDACTED], Delaware?

22 The video begins with you being seated on a couch
23 with your dog, Jack. Do you remember that video?

24 A Yes.

25 Q Do you remember playing with Jack in your lap and

1 also using a video camera remote to film yourself?

2 A Uh-huh.

3 Q May I have one moment?

4 THE COURT: Yes.

5 MR. STRIANSE: Those are my questions.

6 THE COURT: Any redirect?

7 MS. BAKSHI: May we have a moment, Your Honor?

8 THE COURT: Yes.

9 (Pause.)

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

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

13 (Recording is stopped.)

14 MS. DAUGHTREY: It's hard to know whether to
15 stand.

16 THE COURT: You don't need to stand.

17 MS. DAUGHTREY: Okay. On cross-examination the
18 defense asked more detailed questions about what exactly?

19 MS. BAKSHI: He was asking about whether or not
20 he had them in his possession.

21 MS. DAUGHTREY: And it almost sounds like that
22 he downloaded them so that he could have them in his
23 possession, and it seems like it would be appropriate to ask
24 was there a specific purpose that he downloaded these for.
25 And I won't get into the [REDACTED] police thing, but --

1 THE COURT: When did he download them?

2 MS. DAUGHTREY: He downloaded them after they
3 broke up in -- I believe it was March of -- is it March or
4 May?

5 MS. BAKSHI: It would be March of 2004, but I
6 don't know when he downloaded them, yeah.

7 MS. DAUGHTREY: He downloaded them in 2004.

8 MS. BAKSHI: I'm not sure about that date. We
9 would have to ask him about that, but the date reported is
10 11/2004.

11 MS. DAUGHTREY: What I would like to essentially
12 ask him is if he had -- if he was downloading them for his
13 own purpose or to use them for any business purposes or to
14 put them on a web site, or anything like that.

15 MS. BAKSHI: Excuse me one second.

16 (Pause.)

17 MS. DAUGHTREY: Your Honor, this would -- the
18 whole downloading purpose obviously was for -- from what we
19 understand, was for the purpose of reporting this to the
20 police. And this is a prior consistent statement that
21 supports that he's not downloading this for any other reason
22 or any ulterior motive other than to provide this evidence
23 to the police.

24 MS. BAKSHI: Right.

25 MR. STRIANSE: Your Honor, what is the relevance

1 of his motives? I asked a very precise question: Had these
2 photos been in your possession. That doesn't open up the
3 door for why he did it, why he downloaded them, what his
4 purpose was for downloading them. I merely asked him had
5 they been in his possession.

6 THE COURT: Well, it seems to me that perhaps
7 the only relevant inquiry is did he -- did he download them
8 in order to use them himself on his web site, or to post
9 them himself, or something of that nature. I mean, I think
10 it would be fair for them to sort of put that insinuation to
11 bed, if that --

12 MS. BAKSHI: I'm very concerned about even that
13 question particularly coming from us. Throughout this trial
14 and throughout the original cross and other witnesses,
15 defense counsel has made repeated insinuations that Mr.
16 [REDACTED] was interested in running his own web site, well,
17 did run his own web site, web cammed (phonetic) himself,
18 that he was consensual in all this, and --

19 THE COURT: And he agreed to all that. He just
20 testified again about it.

21 MS. BAKSHI: Right. So in this case, this is a
22 different situation. I mean, it's important for him -- for
23 the jury to understand that he was willing years ago, long
24 before this prosecution ever started, to come forward and
25 say -- and sign a police report under penalty of perjury

1 that he -- that all of these pictures had been taken before
2 Mr. ██████ reached the age of majority.

3 And without that context, they will continue to argue
4 as -- or at least put this in the context of their larger
5 argument that this was consensual, this is all about Patrick
6 ██████ trying to run his own stuff and generating content
7 for his own websites.

8 THE COURT: It seems to me that we avoid the
9 whole area that I have ruled out of the case, the prior
10 investigation, and yet meet your problem, which I think is
11 legitimate in terms of where this testimony might lead in
12 terms of argument.

13 If you asked him if he testified that the -- he
14 downloaded these photos for purposes of giving them to law
15 enforcement, period, law enforcement, that doesn't get into
16 the Massachusetts investigation. It accurately reflects why
17 he downloaded them, correct?

18 MS. BAKSHI: Yes.

19 MS. DAUGHTREY: Yes, Your Honor.

20 THE COURT: Is that what he will say?

21 MS. DAUGHTREY: Yes.

22 THE COURT: Does the defense know any different?

23 MR. STRIANSE: I don't know any different, but I
24 have never seen any police reports or anything.

25 MS. DAUGHTREY: There you go.

1 MS. BAKSHI: Your Honor, if I may, as a point of
2 clarification, there have been two separate investigations
3 that have arisen in this case in the state of Massachusetts,
4 one which is what I believe was the subject of both the
5 government's and the defense's motions in limine related to
6 a Massachusetts attorney general investigation that involved
7 a search of -- the search of a residence on distribution of
8 child pornography offense.

9 This, just as a point of reference, is actually a
10 separate offense. It occurred in ██████████ Massachusetts,
11 and the charges alleged -- and we have a copy for Her
12 Honor -- the charges alleged include statutory rape. And
13 these were -- relate to a report that Mr. ██████████ made in
14 2004.

15 THE COURT: And how old was he in 2004 at this
16 time?

17 MS. BAKSHI: I believe he --

18 MS. DAUGHTREY: He was 18.

19 MS. BAKSHI: -- had turned 18.

20 THE COURT: He was 18, all right. I will allow
21 you to ask him -- I'm going to let you do this by leading
22 questions so we don't get into anything dangerous.

23 MS. BAKSHI: Yes, Your Honor.

24 THE COURT: Did you download these photos for
25 purposes of giving them to law enforcement and when did you

1 do that and how old were you.

2 MS. BAKSHI: Okay.

3 THE COURT: Okay? Have you had time to look at
4 those records?

5 MR. STRIANSE: No, I mean, this is probably 15,
6 20 pages.

7 THE COURT: You haven't been given this before?

8 MR. STRIANSE: No.

9 THE COURT: You just got this in the middle of
10 trial, didn't you?

11 MS. BAKSHI: Yes, Your Honor.

12 THE COURT: We'll take however long you need to
13 go through them because we can edit out this long bench
14 conference.

15 MR. STRIANSE: I would like it to be clear for
16 the record that I object to the government being able to
17 elicit this response that he downloaded them for law
18 enforcement.

19 I don't know how me asking them a very basic
20 foundational question, had these photos been in your
21 possession, opens up the door.

22 THE COURT: I think it does, Mr. Strianse, very
23 quickly, given the tact that you have taken with Mr.

24 ██████████ But I will give you all the time that you need.

25 They are -- you have not opened the door. I'm not reversing

1 my ruling on the motion in limine about getting into any of
2 these previous investigations, but I'm going to allow them
3 to make sure the record is accurate as to why he downloaded
4 these photos.

5 MR. STRIANSE: I need to read this, but if I
6 read it and there's no specific mention of the hotel in
7 Iceland photos, how do I know --

8 THE COURT: Is there reference in this report?
9 Anybody know specifically where it is in this report?

10 MS. DAUGHTREY: I don't where it is in that
11 report, but in conjunction with this report, he turned over
12 these pictures to the [REDACTED] Massachusetts Police
13 Department. We got these pictures that he was shown earlier
14 from the police department. They were enclosed with this
15 police report.

16 THE COURT: Why don't we have a jury out
17 questioning of him as to that issue? Did he give these
18 photos to the [REDACTED] Police Department in connection
19 with this report?

20 MR. STRIANSE: Your Honor, I think we also need
21 to get on the record when did they get this information.
22 There are -- I see at least two Jencks Act statements in
23 here, maybe more, that we should have been provided before
24 we cross-examined Mr. [REDACTED]

25 THE COURT: It was my understanding you got this

1 after Mr. ██████ testified, but maybe I'm wrong.

2 MS. DAUGHTREY: I haven't --

3 THE COURT: When did you get it?

4 MS. DAUGHTREY: I have had it just this week, is
5 when I have gotten it. The ██████ Police Department --
6 we have been trying to get it for a long time, and much to
7 our frustration, they did nothing with these -- that we can
8 tell, nothing with these allegations.

9 In fact, they would not send us the information, and
10 we finally got it just a few days ago.

11 THE COURT: I'm remembering some reference to
12 the 16th, which I believe was Monday. I don't know why
13 that sticks in my head. But at some point I think I asked
14 you when did you get these photos, or something. Is that
15 accurate?

16 MS. BAKSHI: I'm not sure when we got them. I
17 saw them for the first time -- these images for the first
18 time right -- not long before -- maybe a day before Mr.
19 Richards --

20 THE COURT: Okay. I'm going to take a recess,
21 and you are going to find out when you got this information.
22 He's going to have time to read it all. If there's
23 something in there that's Jencks that allows him to ask
24 additional questions of Mr. ██████ we'll take that up.

25 You see you all see what you can resolve, and I will

1 be back.

2 THE CLERK: Pause the recording?

3 THE COURT: Yes, pause the recording, please.

4 MS. DAUGHTREY: Can we explain -- once the
5 pausing, explain to Mr. [REDACTED] that we are taking a break
6 for a moment?

7 THE COURT: Yes, we are in recess.

8 (Break.)

9 THE COURT: Okay. Where are we?

10 MS. DAUGHTREY: Your Honor, I talked with both
11 Ms. Bakshi and with Agent Donahue. And basically, my -- we
12 are not able to give you exact dates.

13 But basically my understanding of what happened with
14 regard to this particular police report from [REDACTED]
15 Police Department is as follows. We have been trying
16 throughout this case to get more detailed information about
17 the AG's -- Massachusetts AG's investigation with very
18 little success.

19 At some point the week before trial, Agent Donahue
20 got a big amount of stuff from the Massachusetts AG's
21 Office. And it was around the time -- and I believe it was
22 after the time that he even began or was interested in
23 looking at it and may have even received it after you had
24 ruled that we were not allowed to bring in anything about
25 the prior investigations.

1 At that point, that was not a significant issue for
2 us to look at those reports because they were not coming
3 into evidence, and we had much other stuff to do to prepare
4 for trial.

5 I believe that Patrick [REDACTED] partner, Danny,
6 that -- on the phone, just before the trial started, said,
7 well, there was this other investigation in [REDACTED]

8 And, as I recall, I think that you -- Agent Donahue
9 got this [REDACTED] stuff right really literally on the eve
10 of trial, and we knew at a that point that none of this was
11 coming in because it was prior investigation.

12 At the point in time when Mr. Richards testified, we
13 never looked at the stuff. I think Agent Donahue brought it
14 with him to talk to Mr. [REDACTED] about these pictures and
15 what was going on because we expect that is there going to
16 be some sort of proceedings that occur up into the
17 Massachusetts area.

18 But Kayla Bakshi and I were not aware that there was
19 even a police report available, and actually, I haven't even
20 read through the whole thing, but didn't read any of it
21 until this morning.

22 But when Mr. Richards testified on direct examination
23 that he had never taken any pictures of Mr. [REDACTED] while
24 they were in Iceland, at that point Agent Donahue made us
25 aware of the fact that indeed there were these pictures.

1 And that was when we made color copies during the
2 lunch hour in order for me to cross-examine Mr. Richards
3 about those.

4 I was not aware until yesterday or the day before
5 that there was even this report. I realized that the fact
6 that this report was in the custody of Agent Donahue means
7 that it essentially is in my custody as well, and that I
8 should have turned this over as Jencks material to the
9 defense at the end of Patrick ██████████ testimony. And I
10 realize that's my responsibility. I just wasn't aware of
11 this material until that time.

12 There is a one page written statement by Mr.
13 ██████████ It's very short. The report that was written by
14 a police officer is -- that was not signed by Mr. ██████████
15 is consistent with everything Mr. ██████████ said.

16 I can read for the record this very short statement
17 that Mr. ██████████ said.

18 THE COURT: No, that's not necessary. Let me
19 ask Mr. Strianse, is there anything in there that you want
20 to cross-examine him about?

21 MR. STRIANSE: Nothing that I want to use from
22 that report, Your Honor.

23 THE COURT: Okay. That's all right. Thank you
24 for putting all that on the record. Does the defense wish
25 to say anything?

1 MR. STRIANSE: One other thing that I wanted to
2 put on the record, we are here this morning ostensibly for
3 Mr. ██████████ to identify these photos.

4 The government made the tactical decision to ask him
5 this question about that he downloaded the photos from Tim
6 Richards' server for whatever benefit they could get from
7 that.

8 I don't know how me asking the very narrow, precise,
9 logical questions establishing that those photos had been in
10 his possession somehow opens the door now for the government
11 to be able to elicit that he turned the photos over to law
12 enforcement. I think that's a real stretch.

13 THE COURT: Well, I have ruled on that, and I
14 don't think it's a stretch. So they will be able to ask
15 that very confined leading question --

16 MS. DAUGHTREY: I will.

17 THE COURT: -- on redirect. Anything else?

18 MR. STRIANSE: Nothing further.

19 THE COURT: Okay. All right. Let's go back on
20 the record, and we are ready for the videotape.
21 Mr. Chamberlain needs a few minutes.

22 MS. DAUGHTREY: Has it started?

23 MR. CHAMBERLAIN: It's mute at the moment.

24 MS. DAUGHTREY: Can I just say something to him
25 real quick. Mr. ██████████

1 THE COURT: Go ahead.

2 MS. DAUGHTREY: Mr. [REDACTED] can you hear me?

3 THE WITNESS: Yep.

4 MS. DAUGHTREY: The judge has instructed you
5 earlier that you are not permitted to talk about the
6 [REDACTED] investigation.

7 We have been discussing that while you have been
8 sitting patiently there. And basically the judge has ruled
9 that I may ask you a very limited question that you are
10 allowed to answer correctly and honestly. All right? So I
11 just wanted to make you aware --

12 THE COURT: Let me just -- stop a minute.

13 MS. DAUGHTREY: Yeah.

14 THE CLERK: The videotape is on when you are
15 talking about this and I don't think there's a way -- unless
16 you all have a way to edit the tape.

17 THE COURT: I thought you already edited the
18 tape.

19 THE CLERK: We took out the big block, now we
20 have started the tape with her talking about this.

21 MS. DAUGHTREY: We need to just back it up and
22 start it at that point again.

23 THE COURT: Yeah, just back it up.

24 MS. DAUGHTREY: Can you stop the tape and let me
25 -- yeah, let's stop it -- no, no. Okay.

1 THE COURT: Just wait a minute. Is the tape
2 stopped?

3 MR. CHAMBERLAIN: Yes.

4 THE CLERK: Go ahead.

5 THE COURT: You are going to rewind it --

6 MS. DAUGHTREY: We're going to rewind to it that
7 point. It's 13 something.

8 THE COURT: -- to where we are starting again In
9 the meantime, can she talk with him if I unmute this,
10 Mr. Chamberlain?

11 MR. CHAMBERLAIN: If you unmute this, we will
12 get feedback at the moment.

13 THE COURT: Okay. So we'll wait.

14 MS. DAUGHTREY: All right. I'm sorry. I
15 thought the tape was not running at the point in time when I
16 was talking to him.

17 THE CLERK: She said turn it off, so we turned
18 it off.

19 MR. CHAMBERLAIN: Just back up everything we
20 started taping?

21 MS. DAUGHTREY: Yes.

22 THE COURT: From when I came back in.

23 MR. CHAMBERLAIN: Okay. We are taping over all
24 that that just --

25 THE COURT: Okay.

1 MR. CHAMBERLAIN: Let me know when we are ready
2 to start.

3 MS. DAUGHTREY: Okay.

4 THE COURT: I want her to be able to talk with
5 him without the tape on, okay?

6 MR. CHAMBERLAIN: Okay, one moment.

7 MS. BAKSHI: Can we just -- are you sure that's
8 the right place? Sorry.

9 MS. DAUGHTREY: I think that would be wise.

10 MS. BAKSHI: Just to make sure we are not
11 recording over anything.

12 THE COURT: Yeah. Can you play where -- the
13 last thing that's on the tape?

14 MR. CHAMBERLAIN: Sure.

15 MS. BAKSHI: You are recording.

16 THE COURT: The last thing should be with
17 Mr. Strianse --

18 (Playback of tape. The following statements are
19 made on videotape.)

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

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

23 (Playback of tape is stopped.)

24 THE COURT: That's fine. Let's pause it. Now,
25 can she talk with him and not be recording?

1 MR. CHAMBERLAIN: One moment, Your Honor.

2 (Pause.) Okay. It is paused -- I'm going to keep a monitor
3 on it --

4 THE COURT: And I'm going to unmute.

5 MR. CHAMBERLAIN: -- until we are ready to make
6 sure it doesn't resume.

7 THE COURT: Okay. Mr. [REDACTED] can you hear
8 us?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Go ahead.

11 MS. DAUGHTREY: Sorry about that. We are having
12 logistical issues with the tape, and whatnot.

13 Basically what I was saying before is I'm going to
14 ask you the very simple question, did you download these
15 images of you in Iceland from Mr. Richards' computer for the
16 purpose of turning them over to law enforcement, okay? And
17 I want you to answer that honestly.

18 And it's okay for you to answer that question. We
19 have litigated that on this side, and that's permissible.
20 All right? It will be very limited. I may ask you one or
21 two more questions after that, but I just want you to be
22 aware that you are allowed to answer that question.

23 THE COURT: What is your answer to that
24 question?

25 THE WITNESS: Yes.

1 THE COURT: Okay. And are you going to ask him
2 when he did it?

3 MS. DAUGHTREY: Yes, I'll ask you if you did
4 that in 2004?

5 THE WITNESS: Sounds about the right time frame.

6 MS. DAUGHTREY: Okay.

7 THE COURT: All right. Are we ready to go back
8 on the record?

9 MS. DAUGHTREY: Yes. Is that it?

10 THE COURT: I guess we are ready. Anything from
11 the defense before we go back on --

12 MR. STRIANSE: No, Your Honor.

13 THE COURT: Okay.

14 MR. CHAMBERLAIN: Okay.

15 (Recording resumes.)

16 BY MS. DAUGHTREY:

17 Q All right. Mr. [REDACTED] did you download those
18 images of you in Iceland from Mr. Richards' computer for the
19 purpose of providing them to law enforcement?

20 A Yes.

21 Q And was that in approximately 2004?

22 A Sounds about the right time frame, yes.

23 Q Thank you very much.

24 THE COURT: Have you moved those into evidence?

25 MS. DAUGHTREY: If I have not, I ask at this

1 time to move Exhibit --

2 MS. BAKSHI: 119.

3 MS. DAUGHTREY: -- 119 into evidence?

4 THE COURT: Any objection?

5 MR. STRIANSE: No objection.

6 THE COURT: All right. They'll be received.

7 Any recross?

8 MR. STRIANSE: No recross.

9 THE COURT: All right. We are off the record.

10 (Recording stops.)

11 THE COURT: Okay. Is the tape --

12 MR. CHAMBERLAIN: It's paused.

13 THE COURT: Okay. All right. Mr. [REDACTED]
14 we're finished. And you want to just tell him he's free to
15 go or --

16 MS. DAUGHTREY: Yes. Mr. [REDACTED] you -- I
17 don't know if you can see any of us, but you are free to go
18 at this point. Thank you very much for coming in to answer
19 these questions this morning.

20 THE WITNESS: You're welcome.

21 THE CLERK: Hold him on just a minute.

22 THE COURT: Wait just a minute.

23 THE CLERK: I want to make sure the tape is okay
24 before he takes off.

25 MS. DAUGHTREY: We want to make sure the tape is

1 okay before you take off. So you can relax for a minute and
2 we'll let you know and make sure the tape is okay.

3 THE WITNESS: Okay.

4 THE COURT: I want to talk to them, so go ahead
5 and rewind and --

6 MR. CHAMBERLAIN: Okay.

7 THE COURT: Okay. I will have the instruction
8 draft with all the rulings from yesterday sometime before
9 noon.

10 What we will do is e-mail it to you so that you will
11 have -- you can review it. If you find any sort of
12 typographical, technical, I didn't take out a count that got
13 dismissed or something, if you find anything like that, if
14 you would send us a return e-mail, or something, as soon as
15 possible? If there are any -- anything else we'll have to
16 deal with on Monday morning.

17 MS. HODDE: Your Honor, I apologize. I told the
18 court that Mr. Strianse and I would try to get you our new
19 theory of defense instruction last night. We did not
20 accomplish that.

21 We're going to go accomplish that. Mr. Strianse has
22 something else in federal court. Immediately following
23 that, we're going to get together at my office and the
24 finish that and get that to the court. We expect we could
25 have that by no later than 2:00, depending on how

1 Mr. Strianse's time with the initial appearance. We'll get
2 it to the court as quickly as we can.

3 THE COURT: Unfortunately I'm out this afternoon
4 and probably will not be able to do any more modifications
5 until Monday morning. So just get it to everybody at the
6 same time.

7 MS. DAUGHTREY: Your Honor, I also would like to
8 make an oral motion to reconsider the production elements.
9 I realize that both parties made a mistake originally, but
10 the government is very concerned about the legal and
11 intellectual dishonesty of not giving the jurors the correct
12 instruction.

13 The other concern that the government has is that
14 this could lead to bad precedent. For example, if this were
15 to go up on appeal, it could result in a change in the law
16 about what production -- whether or not production is a
17 strict liability crime, which I think Your Honor announced
18 from the bench yesterday that it was actually a strict
19 liability crime.

20 And I think after -- and I'd like to address the
21 court about another matter after this.

22 THE COURT: Okay. What I told you was there was
23 no binding precedent on this issue. In looking at what
24 there is out there, it appears to me that it is supposed to
25 be a strict liability crime. However, given how this

1 developed, given that the parties agreed on the elements,
2 given that the case was tried on those elements, and at no
3 time during the case or after Mr. Strianse's opening
4 statement where he made a big deal about whether or not the
5 defendant knew who was 18 and who wasn't 18, at no time did
6 the government raise this issue.

7 We finished the proof and then all after sudden there
8 is a big issue on the elements of the crime, and it's simply
9 too late.

10 It seems to me that the court has two choices. The
11 government -- the defendant would be entitled to a mistrial
12 at this time if I changed the elements. That's my view of
13 it. And I'm not going to do that given the unsettled nature
14 of the elements of this crime.

15 We have tried it with the elements being one way.
16 And it will -- if there is a conviction, it will go up that
17 way. And it's in everybody's interest to get these elements
18 clarified.

19 And if this case has to be the case that clarifies
20 those elements one way or another, so be it. That will be
21 in everybody's interest. And if the case has to be tried
22 again, the case will have to be tried again.

23 But I'm not willing to declare a mistrial and try it
24 gain now. We have invested two weeks in this trial, and I'm
25 simply not willing given the unsettled nature of this issue

1 to grant a mistrial, which is what I feel I would have to
2 do.

3 What's your next issue?

4 MS. DAUGHTREY: There is no authority for the
5 elements that are being presented to the jury.

6 MS. BAKSHI: If I made add for the record, Mr.
7 Strianse yesterday made the argument that he has -- I think
8 he used the expression led with his chin on the issue of
9 whether or not Mr. Richards knew the age of all of the
10 performers is -- and espoused that as being wholly relevant
11 to this inquiry.

12 And I just wanted to clarify that, because we talked
13 about it after the hearing yesterday, I wanted to point out
14 that as far as we can tell, Mr. Richards's defense is not
15 that he didn't know the age of Mr. [REDACTED] he has written
16 it down and testified to it and said that at all times he
17 knew that the -- what Mr. [REDACTED] date of birth was,
18 effectively.

19 He wrote it down in his history page, and he
20 testified to that. He instead is challenging when the
21 images are produced, and also -- so in that way, the issue
22 of whether or not he admitted to the defense of the
23 defendant not knowing is not actually relevant to these
24 production charges with respect to Mr. [REDACTED]

25 With respect to [REDACTED] he, as far as I

1 recall, has not actually testified that -- there has not
2 been evidence that he didn't know the age of Mr. [REDACTED].
3 Although it has been implied by the questions on direct and
4 cross related to cigarettes and admission into the
5 pornography conference, it hasn't actually been entered into
6 evidence.

7 So I think that the argument that we have relied upon
8 this is less compelling with respect to the actual substance
9 of production charges.

10 THE COURT: Mr. Strianse?

11 MR. STRIANSE: Your Honor, I think that the
12 defense that we have constructed is particularly relevant to
13 the Paint Tory, or the [REDACTED] charges. And I don't
14 know how you could separate that from the argument that the
15 government makes about Mr. [REDACTED]

16 That is the essence of our defense, and to have the
17 jury be told something now at this late date would put us in
18 a completely untenable position.

19 THE COURT: I think it has been your defense on
20 the Paint Tory and the [REDACTED]. Do you think it's been
21 your defense on [REDACTED]

22 MR. STRIANSE: I think the way that I framed it
23 for the jury was that the performers had to be underage, was
24 one of the questions, and the other question was that if
25 they weren't, he had to know they weren't underage.

1 And I think that that is just so intertwined with our
2 whole theory that if the jury is going to be instructed that
3 it doesn't make any difference, that it's a strict liability
4 crime, the entire tone and tenor of this defense just falls
5 with a big clang.

6 THE COURT: Yeah, I'm not going to revisit this
7 issue. I'm not going to revisit this issue.

8 MS. DAUGHTREY: Your Honor, there is one more
9 thing -- I'm sorry, I didn't mean --

10 THE COURT: Go ahead.

11 MS. DAUGHTREY: With regard to -- we are in the
12 process of working through the brief that you requested
13 about the conjunctive in the indictment, and in conjunction
14 with that we may be filing some requests for some minor
15 alterations to the jury instructions as well.

16 And we will not be able to get those to you by noon
17 today, but I think that can be addressed fairly quickly, and
18 we'll get those filed this weekend so they can be addressed
19 and the parties and everybody has time to read them before
20 10:00 on Monday morning.

21 THE COURT: Okay. There's no more rebuttal from
22 anybody or surrebuttal or anything, we are finished?

23 MR. STRIANSE: I think we're going to have some
24 very brief surrebuttal.

25 THE COURT: From the defendant?

1 MR. STRIANSE: From Mr. Richards.

2 THE COURT: Okay. So we'll have that at 10:00
3 on Monday morning.

4 MR. STRIANSE: Yes.

5 THE COURT: Okay. Okay. Anything else?

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

7 THE COURT: Okay. Thank you. Thank you, Mr.
8 Chamberlain.

9 (TRANSCRIPT CONTINUED IN VOLUME IX.)

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