

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

<b>UNITED STATES OF AMERICA</b>	:	
<b>v.</b>	:	<b>NO. 3:08-CR-142</b>
<b>DAVID C. KERNELL,</b>	:	<b>JUDGES: Phillips/Shirley</b>
<b>a/k/a "rubico,"</b>	:	
<b>a/k/a "rubico10,"</b>	:	
<b>Defendant.</b>	:	
	:	

**SUPERSEDING INDICTMENT**

The Grand Jury Charges:

**INTRODUCTORY ALLEGATIONS**

At all times relevant:

1. Defendant DAVID C. KERNELL was a resident of Knoxville, Tennessee. He occasionally used the nicknames "rubico" and "rubico10", among others, on the Internet.
2. Yahoo! was based in Sunnyvale, California and provided a global online network of integrated services, which included e-mail services, to the public in the United States and abroad through its web site at www.yahoo.com. Yahoo! e-mail subscribers accessed their e-mail accounts on computers and servers maintained by Yahoo! from any computer connected to the Internet located anywhere in the world. The computers and servers for the yahoo.com domain were located outside the State of Tennessee.

3. In the event a Yahoo! e-mail account holder forgot their password or wanted to change their password, the account holder could reset the password on their account by answering specific “questions to validate your identity,” including “Birthday,” “Country of Residence,” and “Postal Code.” After the identification information of the account holder was verified, the Yahoo! password resetting process requested an answer to “your secret question,” which was previously selected by the account holder for the e-mail account.

4. Sarah Palin was Governor of the State of Alaska and the Republican nominee for Vice President of the United States.

5. Governor Palin maintained and used the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com).

6. While in the Eastern District of Tennessee, defendant KERNELL used identification information belonging to Governor Palin without authorization to reset the password and obtain control and access to her e-mail account. The identification information included her Yahoo! ID, birthday, country of residence and postal code used to answer the identity validation questions for resetting the password.

7. In resetting the password to the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com), defendant KERNELL falsely represented his identity as the account holder of the e-mail account and concealed his true identity.

8. In resetting the password to the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com), defendant KERNELL established exclusive control over the confidential and personal information in the account and deprived the account holder of access to the account. At no time did defendant KERNELL have authorization from Governor Palin to access and use the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com).

9. Defendant KERNELL used at least one proxy server to conceal his true Internet Protocol address and location while he exercised control over the e-mail account. A “proxy server” or computer allows an Internet user to make a remote connection and use this computer as a "pass through" point to other places on the Internet, masking the identity of the original computer and assuming the properties and Internet Protocol address of the proxy server.

10. After defendant KERNELL established control over the e-mail account, he read, copied and used the contents of the account. The confidential and personal information included, and was not limited to, other e-mail addresses of her family members, pictures of her family members, at least one cell phone number of her family member, the dates of birth of Governor Palin and another member of her family, and Governor Palin’s address book for her Yahoo! e-mail account.

11. After defendant KERNELL established control over the e-mail account, he disclosed the contents of the e-mail account to others. Screenshots of confidential and personal information obtained from the [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com) account were posted to a public website on the Internet known as <http://www.4CHAN.org>.

12. Defendant KERNELL also posted the reset password and provided others with the means of access to the e-mail account, including confidential and personal information in the account. At least one other individual successfully used the reset password to access the [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com) e-mail account.

13. After defendant KERNELL established control over the e-mail account, he told others that he had “hacked” into the Yahoo! e-mail account of Governor Palin.

14. After posting the new password to <http://www.4CHAN.org>, and in contemplation of an investigation by law enforcement authorities, defendant KERNELL, removed, altered, concealed and covered up records and files on his laptop computer relating to his use of, and his establishing his control over, the e-mail account of Governor Palin. Defendant KERNELL was concerned that the Federal Bureau of Investigation and other authorities would learn of, and obtain evidence concerning, his scheme to gain unauthorized control and access of the e-mail account and to disclose confidential and personal information from the account to others.

#### COUNT ONE

15. The introductory allegations set forth in paragraphs 1 - 14 are re-alleged herein.

16. On or about September 16, 2008, in the Eastern District of Tennessee, and elsewhere, defendant

#### **DAVID C. KERNELL,**

did knowingly transfer, possess, and use in and affecting interstate and foreign commerce, without lawful authority, a means of identification of another person, that is, the Yahoo! ID and date of birth of Governor Sarah Palin, with the intent to commit, and to aid or abet, and in connection with, any unlawful activity that constitutes a violation of Federal law, that is, Fraud and Related Activity in Connection with Computers, under 18 U.S.C. § 1030(a)(2)(C), and Wire Fraud, under 18 U.S.C. § 1343.

[Title 18, United States Code, Sections 2, 1028(a)(7), (b)(2)(B) and (c)(3)(A)]

COUNT TWO

17. The introductory allegations set forth in paragraphs 1 - 5 are re-alleged herein.

18. On or about September 16, 2008, in the Eastern District of Tennessee, and elsewhere, defendant KERNELL did knowingly devise, and intend to devise, a scheme and artifice to defraud, and for obtaining property, that is, information data and pictures from the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com), by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

19. It was part of the scheme and artifice to defraud that defendant KERNELL falsely represented his identity as the account holder of the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com) and concealed his true identity in resetting the password on the e-mail account.

20. It was further part of the scheme and artifice to defraud that defendant KERNELL used identification information belonging to Governor Palin without authorization to reset the password and obtain control and access to the e-mail account. The identification information included her Yahoo! ID, birthday, country of residence and postal code used to answer the identity validation questions for resetting the password.

21. It was further part of the scheme and artifice to defraud that defendant KERNELL obtained control and access to confidential and personal information held in the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com).

22. It was further part of the scheme and artifice to defraud that defendant KERNELL used at least one proxy server to conceal his true identity and location while he exercised control over the e-mail account.

23. It was further part of the scheme and artifice to defraud that defendant KERNELL reset the password and deprived the account holder of the information in the account.

24. It was further part of the scheme and artifice to defraud that defendant KERNELL disclosed the confidential and personal information in the e-mail account [gov.palin@yahoo.com](mailto:gov.palin@yahoo.com) to third parties.

25. It was further part of the scheme and artifice to defraud that defendant KERNELL removed, altered, concealed and covered up records and files on his laptop computer concerning his involvement in the scheme.

26. On or about September 16, 2008, in the Eastern District of Tennessee, and elsewhere, defendant

**DAVID C. KERNELL,**

for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud, and for obtaining property, did knowingly transmit, and cause to be transmitted, and aided and abetted the transmission of, an electronic transmission between the defendant's computer in Knoxville, Tennessee and Yahoo! computers located outside the State of Tennessee.

[Title 18, United States Code, Sections 2 and 1343]

COUNT THREE

27. The introductory allegations set forth in paragraphs 1 - 14 are re-alleged herein. On or about September 16, 2008, in the Eastern District of Tennessee and elsewhere, defendant

**DAVID C. KERNELL,**

in furtherance of the commission of a criminal and tortious act in violation of the laws of the United States and the State of Tennessee, including aiding and abetting other violations of 18 U.S.C. § 1030(a)(2)(C) (Fraud and Related Activity in Connection with Computers); and tortious invasion of privacy, intentionally and without authorization, and in excess of authorization, accessed a protected computer by means of an interstate communication and thereby obtained information, and did aid and abet in same.

[Title 18, United States Code, Sections 2, 1030(a)(2)(C), and 1030(c)(2)(B)(ii)]

COUNT FOUR

28. The introductory allegations set forth in paragraphs 1 - 14 are re-alleged herein.

29. Between on or about September 16, 2008, and on or about September 20, 2008, in the Eastern District of Tennessee, and elsewhere, defendant

**DAVID C. KERNELL**

did knowingly alter, destroy, and conceal a record and document with the intent to impede,

obstruct and influence an investigation of a matter by, and within the jurisdiction of, the Federal Bureau of Investigation, and in relation to and contemplation of such a federal investigation.

[Title 18, United States Code, Section 1519]

A TRUE BILL:

s/ Foreperson  
FOREPERSON

JAMES R. DEDRICK  
United States Attorney

By: s/ D. Gregory Weddle  
D. Gregory Weddle  
Assistant United States Attorney

s/ Mark L. Krotoski  
Mark L. Krotoski  
Assistant United States Attorney



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA

v.

DAVID C. KERNELL

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No. 3:08-CR-142  
(Phillips)

VERDICT FORM

We, the members of the jury, find unanimously and from all the evidence as follows:

1. As to Count One of the indictment charging a violation of 18 U.S.C. § 1028(a)(7) (Identity Theft), we find the defendant, David C. Kernell

\_\_\_\_\_ NOT GUILTY

\_\_\_\_\_ GUILTY

[Proceed to Question 2.]

2. As to Count Two of the indictment charging a violation of 18 U.S.C. § 1343 (Wire Fraud), we find the defendant, David C. Kernell

X \_\_\_\_\_ NOT GUILTY

\_\_\_\_\_ GUILTY

[Proceed to Question 3.]

3. As to Count Three of the indictment charging a violation of 18 U.S.C. § 1030(a)(2)(c) and § 1030(c)(2)(B)(ii) (Obtaining information from a protected computer as a result of unauthorized access to a computer in furtherance of aiding and abetting other violations of § 1030(a)(2)(C)), we find the defendant, David C. Kernell

\_\_\_\_\_ NOT GUILTY

\_\_\_\_\_ GUILTY

[If your response to Question 3 is "Guilty", proceed to Question 4. If your response to Question 3 is "Not Guilty", or if you fail to reach a unanimous decision, proceed to Question 3A.]

3A. As to the lesser included offense of Count Three charging a violation of 18 U.S.C. § 1030 (unlawfully obtaining information from a protected computer as a result of unauthorized access to a computer), we find the defendant, David C. Kernell

\_\_\_\_\_ NOT GUILTY

X \_\_\_\_\_ GUILTY

[Proceed to Question 4.]

4. As to Count Four of the indictment charging a violation of 18 U.S.C. § 1519 (Destruction, Alteration or Falsification of Records in Federal Investigations), we find the defendant David C. Kernell

\_\_\_\_\_ NOT GUILTY

X \_\_\_\_\_ GUILTY

[Please have your foreperson sign and date the verdict form and notify the marshal you have reached a verdict.]

\_\_\_\_\_ 30 APR 2010  
Date