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Extra! January/February 2007

Perilous Reporting

The risks of writing about child porn laws

By Jessica Wakeman

When journalist Debbie Nathan accidentally viewed child porn last May, it set off a chain of events that ensnared her, **New York Times** reporter Kurt Eichenwald, and **Salon.com** into a messy tangle of child porn law and accusations of libel and censorship

Nathan, a freelancer, did some of the first reporting on people falsely convicted of child molestation in the 1980s (**Village Voice**, 9/29/87) Last May, while doing online research for a young adult book on pornography as a social issue, Nathan stumbled across "child porn-y looking stuff"; she immediately left the site. Nathan then documented the experience with her editors and consulted Philip Jenkins, another researcher who has written about child pornography, who advised her that the Department of Justice, which is engaged in a high-profile crackdown on Internet child porn, would probably leave her alone.

But a few months later, a **New York Times** article by Kurt Eichenwald (8/20/06) about child exploitation, along with renewed media hype concerning the Jon Benet Ramsey case, prompted Nathan to revisit the topic. Eichenwald's front-page story examined how "nearly nude" child modeling sites are replacing more sexually explicit child porn sites. (Eichenwald had written a related piece on December 19, 2005, about an adolescent boy lured into taking pornographic photos of himself by Internet predators)


Eichenwald's August 20 piece was accompanied by text in a small box, not written by him, which stated: "United States law makes it a crime to purchase, download or view child pornography, unless the images are promptly reported to authorities and no images or copies are retained "

The trouble begins

Eichenwald says the trouble between them began with Nathan's first email correspondence. In an August 22, 2006 email to Eichenwald, Nathan identified herself as a journalist who gained notoriety for debunking the 1980s daycare ritual-abuse panic, but did not say she was contacting him for a piece in **Salon**. She described stumbling upon a child porn site recently in the course of

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research, and asked him about the wording on legality in the box accompanying his child modeling site piece. I read this as a journalist saying, 'Help me, I m worried about my circumstance,'" Eichenwald said.

Nathan explains that when she contacted Eichenwald, she had queried **Salon** on the topic of researching child porn, but did not yet have a firm assignment. She says, "When I was first in touch with [Eichen-wald], I didn't have any assignment for **Salon** " According to Nathan, on August 24, days after Eichenwald's August 20 **Times** piece, **Salon** approved Nathan's query for an essay.

'You know when I found out about the story? When it ran!' Eichenwald says Chatter in pedophile chat rooms first tipped off Eichenwald to Nathan's August 25 essay, he said For his **New York Times** research, Eichenwald says he visits pedophile chatrooms, and sees himself discussed as a reporter who exposes child porn websites "I am deeply hated by the pedophiles," he says, noting that Nathan's essay "immediately set off online calls for my arrest among the pedophiles "

Eichenwald immediately clicked over to Nathan's essay, "Why I Need to See Child Porn," on **Salon** —and then hit the ceiling when he read the first paragraph:

New York Times reporter Kurt Eichenwald looked at a lot of kiddie-porn Web sites recently while researching the front page article he published last weekend about 'child model 'erotica The kind of looking he did can get a journalist arrested, but Eichenwald isn't very worried. He told me as much in a series of emails

The reference to Eichenwald, as well as Nathan's own story of accidentally visiting a child porn site, was her hook for a discussion of how child porn laws limit legitimate researchers. Only law enforcement is authorized to research images of child pornography—not journalists or sociologists. She cited the example of journalist Larry Matthews, a freelancer for **NPR**, who was tried, convicted and incarcerated for possession of child porn—even though he said he was researching a piece. "That leaves law-enforcement officials and politicians free to say whatever they want about the prevalence and content of images deemed child pornography, with virtually no way for the public to test claims," she wrote.

Nathan's piece suggested a way for journalists to test governmental claims without providing an open loophole for pedophiles. "I want a process that allows non-governmental investigators and journos to be vetted and qualified as child-porn researchers," she wrote—adding, however, "I'm not sure who would do the vetting or what the criteria would be."

"Playing Russian roulette"

For his part, Eichenwald, the father of three young children, was alarmed when he read on **Salon** that he had looked at a lot of kiddie porn. "There could be, by necessity, a referral to Child Services and the removal of children from my home," says Eichenwald "All anyone needed to do was forward the **Salon** story to the Dallas District Attorney's office and I would have been under federal investigation " He called the statements in Nathan's essay "playing Russian roulette with my kids," as the content of her essay gave his pedophile enemies "the power to get me arrested."



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"I understand that he was very frightened," Nathan responds. "I can totally sympathize." But, Nathan says, "It seems to me that danger didn't come from my writing, it came from his writing. Any reasonable person, including a Department of Justice person, would think Eichenwald had viewed pornographic images of children during his research. Eichenwald's descriptions of children are much too visually detailed for him *not* to have viewed child porn, Nathan argues.

The first paragraph of his story on child modeling begins: "In the photograph, the model is shown rising out of a bubble bath, suds dripping from her body. Her tight panties and skimpy top are soaked and revealing. She gazes at the viewer, her face showing a wisp of a smile that seems to have been coaxed from off-camera. . . . The model's online name is Sparkle. She is—at most—9 years old."

A paragraph later in the piece stated, "Based on the images and wording from online advertisements, the sites show toddlers wearing tight thongs and slightly older children posing evocatively while wearing makeup and feather boas. There is even a site that offers images of girls and boys who appear to be 5 or 6 years old, just wearing diapers." Another sentence stated, "The children involved are far younger, and the images far more sexual, emphasizing the minors' genitals and buttocks."

"The things that he says are so visually based," says Nathan. "Just on and on and on. . . . There's just 10 or 12 places where [there is] very visual language that he's using. Anyone reasonable reading the article would think he'd been seeing these images."

But Eichenwald says none of his research put him in possession of illegal images of child porn. "If I did what Deborah Nathan attributed to me, I need to be arrested," he says. "She flat-out libeled me."

Salon responds

Eichenwald says he immediately asked **Salon** to "take off everything in reference to me," threatening to sue both Nathan and **Salon Media Group** for libel.

On August 25, the day after the piece was initially posted, **Salon** replaced it with a correction:

The story argued that under child pornography laws, Nathan and other journalists and researchers had no protection from prosecution if they viewed visual depictions of child pornography, even inadvertently, in the course of their work. In fact, federal law does offer some legal protection for journalists and other researchers. An "affirmative defense" may exist that would protect such work under certain circumstances, and the opinion asserted by Nathan that her work, and the work of other journalists, would constitute a violation of the law was inaccurate.

Later, on August 31, **Salon** posted a second correction with a longer account of why the piece was taken down. The second correction quoted a passage from Eichenwald's original August 20 story:

The **Times** did not subscribe to any sites, which it first saw referenced in online

conversations among pedophiles. The **Times** followed a link posted in those conversations to forum postings and images on freely accessible pages of the modeling sites. Because those sites appeared to be illegal, the **Times** was required by law to report what it had found to authorities. Federal law enforcement officials were notified in July about the sites.

Representatives from **Salon** did not respond to requests for comment about Nathan's story.

"The debate was cut off"

Salon's removal of the piece from the site troubled Nathan. In an August 27 email to **Salon** news editor Mark Schone and editor-in-chief Joan Walsh, she expressed her distress that she was not consulted before **Salon** took down her piece.

"I wanted to start a debate," Nathan says. "I think the real issue is that the debate was cut off. The debate was cut off because Eichenwald adopted this weird law-and-order mentality."

To the best of Nathan's knowledge, **Salon** did not run her piece by its lawyer. But after the lawsuit threat, Nathan said, **Salon's** lawyer spoke with her "as a courtesy." The lawyer told her Eichenwald would prevail in a lawsuit because she had committed "libel per se," which is a written or verbal accusation of a crime or immoral acts, where proof of malice is not needed.

"**Salon** clearly was terrorized," Nathan said. She calls Eichenwald "litigious," saying his threat to sue is "violative of the principles of the 1st Amendment" and behavior unbecoming a journalist. "To me, it's very tragic to adopt the same mentality as the government," Nathan said. "Certainly, if his work was mischaracterized in my piece, that was unfortunate."

But ultimately, Nathan says, the back-and-forth between her, **Salon** and Eichenwald is exasperating for another reason: "The whole legal thing is so diversionary to the real argument."

Reporting on child porn

"This is an exceedingly dangerous area of reporting [Nathan] is right, reporters can't just do all this willy-nilly," Eichenwald says.

That point may be all that Nathan and Eichenwald agree on.

Viewing images of child porn is not essential when researching the issue, Eichenwald says. He described his research on Masha Allen, who he said at age 8 was adopted from a Russian orphanage by a pedophile, and whose repeated rapes were caught on film for four years. "Now, I haven't seen any of them because they're illegal. What I have seen are cropped versions, what I have seen are images where they have the images removed but you can see what's happened," he said.

Law enforcement found Masha Allen and she is now able to sue anyone who is found in possession of images of her on their computer. "The victimization does not involve the photographs" exclusively, Eichenwald said. "The true victimization involves the viewing."

Eichenwald called child porn “the visual depiction of child sexual assault”—and said the sexual assault occurs every time an image is viewed. Journalists don’t need to look at crime evidence, he says; they take the police’s word as truth. The same should go for child porn, he argues, wondering why would Nathan want to allow journalists to view these images.

He characterized Nathan’s proposal for government-sanctioned viewing of child pornography by researchers as a slippery slope. “Who’s going to be applying for these licenses she dreams up?” he asked.

Checking on sacred cows

Nathan, of course, has no desire to make life easier for people who sexually assault children. But she does believe strongly in not depending on only what the government and the police have to say about child porn. Eichenwald’s argument is “the traditional government argument,” Nathan counters, “He’s very naive if he thinks the government is completely trustworthy,” she says. “It’s our duty to question everything. I don’t believe in sacred cows and he clearly does.”

Journalists should be watchdogs, she wrote in her piece, because “the government, including the courts, has often been as irrational as the rest of society when it comes to children and sex.”

“You have to look at images,” Nathan says. “This is basic reporting. This is just Journalism 101.” She adds: “A lot of times the images are not of minors. . . . You have to get experts in on all these cases to determine how old these [people] are. Eichenwald says we’re re-victimizing a victim, but if it’s not even a child [in the photo], and the government [is] changing it for other reasons. . . . who’s going to do [research]?”

Countered Eichenwald, “Debbie lives in a fantasy world where there are all these child porn cases where there’s an argument about whether they’re child porn. There are some. There are a few. [But] the vast majority of child porn cases result in guilty pleas.”

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