

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

PEOPLE OF THE STARE OF MICHIGAN,

v

No. 06-877-FH

KENNETH GOURLAY,

Defendant./

EXCERPT OF TRIAL - TESTIMONY OF JUSTIN BERRY

BEFORE THE HONORABLE ARCHIE C. BROWN

Ann Arbor, Michigan - Wednesday, March 7, 2007

APPEARANCES:

For the People: DOUGLAS M. BAKER (P24517)
Office of the Attorney General
3030 West Grand Blvd. FL 10
Detroit, MI 48202
(313) 618-2234

For the Defendant: JAMES C. HOWARTH (P15179)
535 Griswold Street Ste. 1030
Detroit MI 48226
(313) 962-3500

Transcription By: Sandra Traskos, CER 7118
Accurate Transcription Services
(734) 944-5818

TABLE OF CONTENTS

PAGE:

WITNESSES: PEOPLE

JUSTIN BERRY

Direct examination continues by Mr. Baker	4
Cross-examination by Mr. Howarth	5
Re-direct examination by Mr. Baker	41
Re-cross examination by Mr. Howarth	49

EXHIBITS:

RECEIVED:

DX #1 Copy of Eichenwald check for \$2,000	36
DX #2 Copy of deposit slip for check	36
DX #3 Copy of cash-out banking transaction	36

1 Ann Arbor, Michigan
 2 Wednesday, March 7, 2007 - 9:16 a.m.
 3 * * * * *
 4 (Indiscernibles contained in this transcript
 5 are due to speaker not standing near a
 6 microphone.)
 7 THE CLERK: -Trial Court is now in session,
 8 the Honorable Archie Brown presiding. You may be
 9 seated.
 10 THE CLERK: Docket number one, People versus
 11 Kenneth Gourlay, 06-877 FH.
 12 MR. BAKER: Douglas Baker on behalf of the
 13 People.
 14 MR. HOWARTH: Good morning, Your Honor. James
 15 Howarth on behalf of Mr. Gourlay.
 16 THE COURT: Ready for the jury?
 17 MR. HOWARTH: Your Honor, I would ask just--
 18 permission to ask the witness just several more
 19 questions on Direct before I turn him over to Mr.
 20 Howarth.
 21 THE COURT: Any objection?
 22 MR. HOWARTH: I don't think that would be fair
 23 to object.
 24 THE COURT: Okay, fair enough. We'll bring
 25 the jury up.

- 3 -

1 BY MR. HOWARTH:
 2 Q Good morning, Mr. Berry.
 3 A (Inaudible).
 4 Q Mr. Berry, you have given previous testimony in this
 5 case, have you not? Where you took the witness stand
 6 like you did today?
 7 A Yes, sir.
 8 Q And that was at a District Court out on a street called
 9 Hogback Road, do you remember that?
 10 A Street name I don't recall, no.
 11 Q Okay. And at that time you were given an oath, just
 12 like you were yesterday, swear to tell the truth, am I
 13 right?
 14 A Yes, sir.
 15 Q And did you- as far as you could do, did you tell the
 16 truth?
 17 A (Inaudible).
 18 Q Mr. Berry. You told us yesterday afternoon that you
 19 were in business right now. Am I correct?
 20 A That's correct.
 21 Q What is the nature of that business?
 22 A Website development.
 23 Q So you are still in the computer business?
 24 A Correct. I own a company called Expert Creations.
 25 Q I want to take you back, Mr. Berry, to the first

- 5 -

1 THE CLERK: All rise.
 2 (At 9:18 a.m., jury enters Courtroom.)
 3 THE CLERK: You may be seated.
 4 THE COURT: You may proceed. Mr. Barry, if
 5 you'll retake the witness stand. I'll just remind you
 6 that you are still under oath. And Mr. Baker, I
 7 believe you had a few questions you wanted to ask
 8 before Cross-exam?
 9 MR. BAKER: Yes.
 10 JUSTIN BERRY
 11 called as a witness at 9:18 a.m., testified as follows:
 12 DIRECT EXAMINATION CONTINUES
 13 BY MR. BAKER:
 14 Q Good morning, Mr. Berry.
 15 A Good morning.
 16 Q Did you have an opportunity to review the three videos
 17 that were- had been represented to you (indiscernible)?
 18 A Yes, sir.
 19 Q And do you recall making those videos?
 20 A Yes.
 21 Q And how old were you in those videos?
 22 A Approximately 16 -17.
 23 MR. BAKER: I have nothing further.
 24 THE COURT: All right, thank you. Cross-exam.
 25 CROSS-EXAMINATION

- 4 -

1 contact that you had with Mr. Gourlay. And I believe
 2 that you said that you set up the web cam in your
 3 mother's home, in the year 1999. In other words, when
 4 you were 13 years old. Am I correct?
 5 A That's correct.
 6 Q And you have testified, have you not, that within weeks
 7 of setting up that web cam, you got contacted by Mr.
 8 Gourlay?
 9 A That's correct.
 10 Q Did you not testify yesterday afternoon, on Direct
 11 examination by Mr. Baker, that you first had contact
 12 shortly after setting up Justin's cam dot com?
 13 A Not that I can recall.
 14 Q You don't recall saying that yesterday afternoon?
 15 A No.
 16 Q You have to speak up a little for me.
 17 A (Indiscernible).
 18 Q Okay. We went through a lot of messages yesterday,
 19 instant messages and I think some- is it called chat
 20 room messages?
 21 A E-mails.
 22 Q E-mails, okay. And we went through those yesterday and
 23 it seems to me that they were all- almost all in late
 24 2002 into the very early part of 2003, am I correct?
 25 A I believe that's what the documents said.

- 6 -

1 Q Do you have some evidence, something on a hard drive
 2 somewhere, of you talking to Mr. Gourlay in 1999, 2000,
 3 or 2001?
 4 A Not unless the Court has any documents. I don't
 5 believe -I don't have any paperwork, no.
 6 Q Do you have any way of proving, other than your
 7 testimony, that you were actually talking to Mr.
 8 Gourlay in 1999, 2000, and 2001?
 9 A I spoke with him on the Internet, yes.
 10 Q I mean, do you have any -any way that we can document
 11 that?
 12 A I don't know if the Court has any records. I haven't
 13 seen all the evidence.
 14 Q You don't have them?
 15 A (Indiscernible) no.
 16 Q Is it possible, Mr. Berry, that you actually didn't
 17 meet -er, didn't have contact with Mr. Gourlay until
 18 2002?
 19 MR. BAKER: Well I'm going to object, Your
 20 Honor . The nature of that, isn't it
 21 possible. And -I mean. He is really inviting the
 22 witness to speculate. I suppose anything is possible.
 23 MR. HOWARTH: Well, no. He can easily say.
 24 No, that is not possible, because I have absolute
 25 specific recollection of talking to him in 1999, 2000,

1 and 2001.
 2 THE COURT: Objection overruled. I believe
 3 the witness's answer was no.
 4 MR. HOWARTH: The witness's answer was no?
 5 THE COURT: Is that correct?
 6 THE WITNESS: I spoke with your client at age
 7 13.
 8 BY MR. HOWARTH:
 9 Q Now you testified yesterday to a lot of the things that
 10 Mr. Gourlay did with your various websites. That being
 11 mainly JFWY and Mexico Friends dot Com, am I right?
 12 A And Justin's Cam dot Com, correct.
 13 Q Did -did Mr. Gourlay have anything to do with that
 14 original web cam that you set up in 1999? In other
 15 words, did he help you get it or suggest that you use
 16 that in some way?
 17 A The web cam was sent to me through a company called
 18 Earthlink.net.
 19 Q It had nothing to do with Mr. Gourlay? Am I correct?
 20 A When I first received the web cam, I did not know of
 21 Mr. Gourlay. Correct.
 22 Q And when you first started taking off clothing,
 23 specifically your shirt at first, and then other
 24 clothing, you still didn't know Mr. Gourlay, did you?
 25 A I'm not aware if he was watching my web cam before he

1 spoke with me.
 2 Q But you had no contact with him, when you first started
 3 to take off clothes on the web cam?
 4 A Yes, I spoke to him.
 5 Q When you first -the first time that you took your
 6 clothes off on the web cam, you were already in contact
 7 with Mr. Gourlay?
 8 A No.
 9 Q I'm sorry. Then I may have misheard you. When you
 10 originally started to make money by taking off your
 11 clothes and masturbating that is still before you met
 12 Mr. Gourlay, isn't it, when you first started to do
 13 that?
 14 A That's correct.
 15 Q Did -did Mr. Gourlay suggest at that time -this is back
 16 in 1999, when you first set the cam up, did he suggest
 17 to you that you should masturbate for money on -on the
 18 Internet?
 19 A Can you restate the question, please?
 20 Q When you first began to masturbate on the Internet, was
 21 it Mr. Gourlay that suggested that you do that?
 22 A In the beginning?
 23 Q Yes.
 24 A No. Later, yes.
 25 Q Now you had a business connection with Mr. Gourlay for

1 some period of times, a couple of years, am I correct?
 2 A That's correct.
 3 Q And that was not entirely restricted to child
 4 pornography even by your own testimony, am I correct?
 5 A Correct.
 6 Q As a matter of fact, you did a lot of legitimate work
 7 for Chain (ph) Communication, is that correct?
 8 A That's correct.
 9 Q And you worked hard for Chain Communication, doing
 10 legitimate work?
 11 A Yes, sir.
 12 Q Now when you had these various pornographic websites,
 13 where did the content- I mean as to what was going to
 14 be on the screen, who had input into what the content
 15 would be?
 16 A Myself and Ken Gourlay.
 17 Q Have you not testified in the past, sir, that the
 18 content for the website came from the users?
 19 A I don't understand.
 20 Q I'm going to show you page 107 of a transcript of your
 21 testimony in the District Court. I'm going to let you
 22 read it to yourself. And I'm suggesting lines 12
 23 through 14.
 24 MR. HOWARTH: If I may approach, Your Honor?
 25 THE COURT: Yes, you may.

1 BY MR. HOWARTH:
 2 Q Page 107, lines 12 through 14.
 3 A Correct. Basically what I am stating here -should I
 4 read it out loud?
 5 Q No, I'll read.
 6 A Okay.
 7 Q You were asked this question by me on page 107. And
 8 who decided the -or what the input would be? What the
 9 subject matter would be? And your answer was, the
 10 users. Am I correct?
 11 A Correct.
 12 Q All right. So you understood me when you testified in
 13 the District Court. Are you having any problem
 14 understanding me now?
 15 A I-I now understand what you are asking me.
 16 Q Okay.
 17 A You clarified yourself.
 18 Q And so this testimony was correct?
 19 A That's correct.
 20 Q It doesn't say anything about Mr. Gourlay having input
 21 into the content, does it?
 22 A Mr. Gourlay had input.
 23 Q No, I said as far as your testimony in the District
 24 Court. You didn't say anything about Mr. Gourlay
 25 having input?

- 11 -

1 A It said the users; Ken Gourlay was a user of the
 2 website.
 3 Q Mr. Gourlay's contribution to JFWY, I'm going to
 4 suggest to you was limited to the fact that it was
 5 registered to Mr. Gourlay, hosted on his servers an
 6 applet on the website only. Would that be an incorrect
 7 statement?
 8 A He hosted the website and he registered the domain
 9 name. He did programming for the website and he
 10 suggested the content of the website. That is correct.
 11 Q I'm going to show you page 142, of your previous
 12 testimony. I am going to ask you to, um, I show it as
 13 page 140 -I'm looking at the wrong page, excuse me.
 14 I'd like you to read page 140 to page 142, to yourself.
 15 Would you do that?
 16 A Okay.
 17 Q I'm sorry. We only have one of these (indiscernible).
 18 The following questions and answers given the District
 19 Court: Page 142, line 18; Question: What was Mr.
 20 Gourlay's contri -oh, that's--I should have gone back
 21 to 140, excuse me. Page (sic) 18 on page 140: And what
 22 exactly was Mr. Gourlay's contribution to that website,
 23 to the J? You've already told us what that stood for.
 24 We both know the website we're taking about. Am I
 25 right? Yes. All right, what was Mr. Gourlay's

- 12 -

1 contribution to that website? Uh, let's see. Oops,
 2 JFWY was registered by Mr. Gourlay, the domain name
 3 itself. It was hosted by Mr. Gourlay on his servers
 4 based in Ann Arbor, Michigan. There was an applet on
 5 the website, I believe.
 6 And that takes us over into page 141. And,
 7 um, okay. All right. And then on page 142, at line
 8 eight; My question again, Mr. Berry, was -was there any
 9 other contribution to JFWY made by Mr. Gourlay that you
 10 have not given us yet? Your answer: That I haven't
 11 told you about here today? My question to you is, yes.
 12 And you say, no. There were no other contributions.
 13 Was that your testimony in the District Court?
 14 MR. BAKER: Well I'm going to object, Your
 15 Honor, because he has left out the questions and
 16 answers about what the contributions were. So skipping
 17 ahead, I think he tends to be (indiscernible) and
 18 misleading. But I mean, we don't know what his answer
 19 was, unless we go through them.
 20 MR. HOWARTH: I'm not sure I follow your
 21 objection. The question was, what were Mr. Gourlay's
 22 contributions to JFWY. I understood the answer to be a
 23 series of technical support areas. And then I say, is
 24 that all he did? And his answer is, yes.
 25 MR. BAKER: But we've left out what he- his

- 13 -

1 answers were, so we understand when we get to the -that
 2 question that you told us, they need to know what he
 3 just said.
 4 THE COURT: It's a valid objection in the
 5 Michigan Rules of Evidence and the Rule of
 6 Completeness. I will leave that for Re-direct if you
 7 believe there is something that is being left out.
 8 MR. HOWARTH: Sure.
 9 THE COURT: Overruled as to the specific
 10 (Indiscernible). You may go on.
 11 MR. HOWARTH: Thank you, Your Honor.
 12 BY MR. HOWARTH:
 13 Q Did you give that testimony in Ann Arbor last summer?
 14 The testimony that you read? The page (sic) was 140 to
 15 142?
 16 A Did I give testimony?
 17 Q Did you give that testimony which you just read? Was
 18 that your testimony?
 19 A That is the Court's documents.
 20 Q That is your testimony?
 21 A Yes.
 22 Q Okay. And you didn't say there that Mr. Gourlay was
 23 contributing to the input- the content of the videos.
 24 Am I correct?
 25 MR. BAKER: Well, I'm going to object, Your

- 14 -

1 Honor. If -if he has a question and answer on that
 2 subject of content, then I wouldn't. But just to then
 3 ask him to summarize his own testimony that goes back
 4 to tall the other things we haven't gone into yet at
 5 the exam. I mean, he is not confronting him with a
 6 question and answer that is in conflict with his
 7 testimony now.

8 He is just asking him to characterize or
 9 summarize. Because I think that under the rules, he
 10 has to go to the question that was asked of him, that--
 11 the standard is the same as one now, where he has given
 12 a different answer, not ask him to summarize everything
 13 and then say, isn't that different from before.

14 THE COURT: Mr. Howarth?

15 MR. HOWARTH: Your Honor, the question is
 16 extremely specific. Mr. Berry lists a series of
 17 contributions. I then ask him, is that it? Were there
 18 any other contributions? His answer is, no. There
 19 were not any other contributions. I don't see how that
 20 can be misleading? If he says something different, in
 21 a different part of the transcript, as- as the Court
 22 has already said, Mr. Baker can go to that. But as far
 23 as what he is saying on pages 140 to 142, he is saying
 24 that is his contribution, nothing else.

25 THE COURT: I'll overrule the objection.

1 BY MR. HOWARTH:

2 Q As to Mexico Friends dot Com. Mr. Gourlay registered
 3 the domain, is that correct?

4 A That's correct.

5 Q He used his servers to host videos?

6 A That's correct.

7 Q And he used applets for speed, am I correct?

8 A That's an incorrect statement.

9 Q All right. Okay, let's just go to the questions that

10 were asked at that time and used the specific questions
 11 and answers on page 142 going into 143, line 18.

12 Question: What was Mr. Gourlay's contributions to the
 13 Mexico Friends website? Had it, and if it is exactly
 14 the same as it was to JFWY, you can tell me that and
 15 make it easy. But if it was different, please tell me
 16 if it was different. Answer: No. Mr. Gourlay
 17 registered the domain name, Mexico Friends dot Com. He
 18 allowed me to use his servers to host videos, child
 19 pornography for that website on his servers.

20 And my question at the bottom of one page-
 21 page 142; that was his contribution? And you said -
 22 answered, also, the applet that I described in the
 23 previous question, the one that speeds things up?
 24 Answer -your answer; the one that allows the web cam to
 25 refresh at a certain rate -at a certain interval

1 described by the code itself? Answer, yes. Does that
 2 sound like your testimony?

3 A That's what it says, yes.

4 Q Nowhere in there are you talking about Mr. Gourlay
 5 choosing the content. The actual subject matters of
 6 the video. Am I correct?

7 A I wasn't asked that question, correct.

8 Q You told us yesterday afternoon that Mr. Gourlay did
 9 not receive a percentage of your profits, am I correct?

10 A He received money but not a percentage, correct.

11 Q Are you able to tell us, during the entire time that
 12 you had a business relationship with Mr. Gourlay, how
 13 much money you paid him?

14 A Thousands of dollars.

15 Q All right. And I appreciate that, but again.

16 Thousands can be two thousands. It can be \$150,000.

17 A I don't have a specific number unless you have PayPal
 18 record- records documenting otherwise. I don't know.

19 Q Well, when you were in the District Court, didn't you
 20 tell me that you had he records?

21 MR. BAKER: Well, Your Honor, I'm going to
 22 request that if he is talking about on the record, when
 23 he makes these references, that we -at least I be shown
 24 where he is talking about in the transcript?

25 MR. HOWARTH: Okay. We can do that.

1 THE COURT: Well, we've not yet gotten there.
 2 The witness hasn't answered the question yet, whether
 3 he remembers or not.

4 MR. HOWARTH: Well -

5 THE COURT: The witness will answer the
 6 question, if he can.

7 THE WITNESS: If I could see a copy of my -

8 MR. HOWARTH: Sure. I just want to get you to
 9 the right line, that's all.

10 BY MR. HOWARTH:

11 Q Okay. Page 143, and I'm going to start with line 18
 12 and ask you to read up to the first couple of lines on
 13 page 144. Is that all right?

14 A So you'd like me to read up to 144 from where?

15 Q The, uh, line 18--

16 A Okay.

17 Q --until these first lines up here.

18 A All right. You've been-

19 Q No, just to yourself.

20 A Oh, okay.

21 THE COURT: Just refresh your recollection.

22 THE WITNESS: Okay.

23 BY MR. HOWARTH;

24 Q I'll ask you again, Mr. Berry, didn't you tell us in

25 Ann Arbor that you have the records of what you paid

1 Mr. Gourlay?
 2 A That's not what I stated in that transcript.
 3 Q All right. Let's see if--what your exact words were?
 4 A Okay.
 5 Q Page 143, line 18. Question: All right. You've
 6 indicated to us that you paid thousands of dollars to
 7 Mr. Gourlay for his services, is that correct? Your
 8 answer; that is correct. Question: And do you have any
 9 documentation of the money that you paid to either Mr.
 10 Gourlay himself, personally, or to Chain
 11 Communications? That is, cancelled checks, agreements,
 12 anything like written, uh, agreements, something like
 13 that? Your answer: Yes. Question: Are those still in
 14 your possession? Answer: I physically don't have them
 15 with me, no. Question: No, I understand. But do you
 16 have them in your possession somewhere? Answer: I
 17 could probably find the records, yes.
 18 A What I was stating there is, most likely PayPal still
 19 has the records. And if we needed them, you could
 20 probably subpoena them.
 21 Q You don't have them with you now?
 22 A No, sir.
 23 Q Have you reviewed them in the last six months?
 24 A No, sir.
 25 Q You told us yesterday afternoon when Mr. Baker asked

1 get out of the business, was you simply had forgotten?
 2 A In this document, you didn't let me fully answer my
 3 question.
 4 Q I didn't?
 5 A Correct.
 6 Q How did I stop you?
 7 A That's a fair statement, but as well as- and then it
 8 stops and it says, well you've answered my question.
 9 Q Okay. And you went on to talk about the fact that he
 10 tries to persuade you to do a lot of things, am I
 11 right?
 12 A Right. Ken was in conflict of his interests at many
 13 times.
 14 Q Okay. And he also told you that he did not want to be
 15 involved in illegal acts, am I correct?
 16 A Right. Sometimes he said that.
 17 Q I'd like you to discuss with me a bit, the subject of
 18 money and drugs. You -you told us yesterday that in
 19 the pornography business that you made a lot of money.
 20 Am I correct?
 21 A A terrific amount, yes.
 22 Q And did you say- have you said previously under oath -
 23 and I can direct you to the page number. Well did you
 24 say, in fact, for a child to be making that amount of
 25 money was more than considerable; it was a terrific

1 you the question, did Mr. Gourlay ever tried to
 2 persuade you to get out of the porn business? And
 3 correct me if I'm wrong now. I believe you answered.
 4 I can't recall him doing that. Am I right?
 5 A That's correct.
 6 MR. HOWARTH: Mr. Baker, page 107 and 108.
 7 BY MR. HOWARTH:
 8 Q I've put a black mark here, but you can read all that
 9 you want on pages 107 and 108, so you can answer the
 10 question if possible.
 11 A Okay.
 12 Q Does that reflect your recollection of the testimony
 13 that you gave in July at the District Court?
 14 A That's correct.
 15 Q Well I'll ask you the question again. Did Mr. Gourlay
 16 on several occasions attempt to persuade you to get out
 17 of the pornography business?
 18 A According to this document, what I said was yes.
 19 Q No. It's not according to the document. Let's start,
 20 first of all, with -is that what you testified to last
 21 summer?
 22 A Yes, sir.
 23 Q Is it correct?
 24 A Yes, sir.
 25 Q So the answer, I can't recall of him, uh, asking me to

1 amount of money. And I'm not saying that--that's a
 2 conflict. I'm just saying that you reiterated that.
 3 That it was a tremendous amount of money. Am I
 4 correct?
 5 MR. BAKER: Well, Your Honor, could counsel at
 6 least point out to me, if he is using the transcript
 7 where he is at? I think I am entitled to that under
 8 the rules. If he is going to use the transcript
 9 (indiscernible). At least I and/or the witness has a
 10 right to be shown (indiscernible).
 11 THE COURT: Mr. Howarth?
 12 MR. HOWARTH: I'll withdraw the question.
 13 THE COURT: All right.
 14 BY MR. HOWARTH:
 15 Q Mr. Berry, did you in fact make hundreds of thousands
 16 of dollars in the porn business?
 17 A Yes.
 18 Q We don't know how many hundreds of thousands, but you
 19 are content with the figure that it was hundreds of
 20 thousands of dollars?
 21 A It was over a hundred thousand dollars.
 22 Q During the time that you were making this money, Mr.
 23 Berry, you have admitted to us that you were using
 24 Marijuana. Am I correct?
 25 A Yes.

1 Q And you were using Cocaine?
 2 A Yes.
 3 Q And you were using a lot of Cocaine, weren't you?
 4 A Yes.
 5 Q Have you ever characterized that as more than you can
 6 imagine?
 7 A If there is a document stating that I said that, I'd be
 8 happy to look at it.
 9 Q Well, why don't you -
 10 THE COURT: I'll tell you what, again, Mr.
 11 Berry. Please listen to the question and answer the
 12 questions being asked. That was not the question that
 13 was asked.
 14 MR. HOWARTH: Thank you, Your Honor.
 15 BY MR. HOWARTH:
 16 Q Would you read pages 113 to 115 to yourself?
 17 A Okay.
 18 Q So would the term more than you can imagine be an
 19 accurate term?
 20 A I don't see that here in the document.
 21 Q Were you also abusing alcohol at that time?
 22 A Yes.
 23 Q Now when you go to the Marijuana, does that affect your
 24 mind at all?
 25 A To this day?

1 name was Monique Winkis, in the -on the 25th and 26th of
 2 July, the year 2005?
 3 A That's correct.
 4 Q And among the things that special agent, Winkis, talked
 5 to you about at that time was what we want to sort of
 6 clear up, what crimes have you committed that you might
 7 need immunity for? Is that fair?
 8 A There was a proffer agreement, yes.
 9 Q Well I'm talking about the interview you had with
 10 special agent Winkis.
 11 A That interview was in- I don't understand?
 12 Q All right. Did you have a conversation with special
 13 agent, Monique Winkis?
 14 A Yes.
 15 Q Does the dates that I mention to you sound right?
 16 A Yes.
 17 Q All right. And your attorney Steven Ryan was there,
 18 was he not?
 19 A Yes.
 20 Q All right. Now did special agent Winkis say -now not
 21 these exact words, but say to you we would like to know
 22 what crimes you have committed in the past?
 23 A Yes.
 24 Q All right. Now you told us yesterday that you
 25 mentioned a credit card fraud.

1 Q No, no, then? I'm talking about in the years that you
 2 were using it?
 3 A I was -
 4 Q Up to -I'm guessing from your testimony, up to the year
 5 2005, some time midway through the year 2005?
 6 A When you are high -Marijuana affects everything.
 7 Q It affects your perception of what you see, doesn't it?
 8 A It all depends.
 9 Q And Cocaine affects your mind, doesn't it?
 10 A Yes.
 11 Q And that can affect even your memory, can't it?
 12 A I don't know.
 13 Q Okay. And of course alcohol doesn't do you much good
 14 either, especially when you are as young as you were.
 15 am I correct?
 16 A Alcohol is a substance that can be abused, yes.
 17 Q Thank you. Now when you made the decision that you
 18 would go before Congress and you would tell your story,
 19 you, um, later decided to talk- er, an arrangement was
 20 made with Steven Ryan, your attorney, that you would
 21 talk to the Federal Bureau of Investigation. Am I
 22 correct?
 23 A I don't understand the question.
 24 Q All right. Did you talk to the Federal Bureau- an
 25 agent from the Federal Bureau of Investigation, whose

1 A That is correct.
 2 Q And you said you got some credit card numbers from
 3 somebody?
 4 A Yes.
 5 Q Was that person Aspen Kurt?
 6 A I have no idea what that means.
 7 Q Okay. How many credit card numbers did you get?
 8 A I don't recall. I don't recall.
 9 Q Well I mean was it two or three, or was it dozens?
 10 A Dozens.
 11 Q And it's true, is it not, that you told the FBI that
 12 you stay home all day with these stolen credit card
 13 numbers, ordering goods for yourself. Am I correct?
 14 A I don't recall the exact conversation with the FBI. I
 15 did tell them I engaged in credit card fraud, yes.
 16 Q Did you tell them that you engaged in attempted
 17 insurance fraud?
 18 A Yes.
 19 Q Did you tell them that--that attempted insurance fraud
 20 was hiring somebody or persuading somebody to burn your
 21 own car?
 22 A No.
 23 Q That's not true?
 24 A Correct.
 25 Q Did you tell them about arson?

1 A No.
 2 Q If that is in the 302, it is wrong -the 302 is wrong.
 3 Which is fine.
 4 MR. BAKER: Objection, Your Honor, as to
 5 asking him to characterize some document he never
 6 created.
 7 THE COURT: Sustained.
 8 MR. BAKER: (Indiscernible).
 9 THE COURT: Sustained.
 10 MR. HOWARTH: All right. I'll use this
 11 document hopefully to refresh the witness's
 12 recollection, with the absolute understanding that he
 13 didn't create the document. But that doesn't mean it
 14 couldn't refresh his recollection.
 15 THE COURT: You may approach.
 16 BY MR. HOWARTH:
 17 Q Mr. Berry, this is the FBI document. I know you didn't
 18 write it; you didn't even sign it. But I'm just
 19 wondering if it will refresh your recollection. If you
 20 would read the second and third full paragraph, and
 21 then the last paragraph. And anything you want in
 22 between. Read that to yourself, please.
 23 A Okay.
 24 Q All right. Does that refresh your recollection of the
 25 conversation with the special agent from the FBI?

1 A No.
 2 Q Sir?
 3 A No.
 4 Q And you didn't solicit street kids named Mickey and
 5 Chris to masturbate on film?
 6 A There were other teenagers who Greg Mitchell suggested
 7 that I go and ask them if they would like to be on the
 8 camera. I did not know the ages of them nor did I want
 9 to ask. So I don't know if they were over or under 18.
 10 Q All right. Did you recruit Mickey and Chris?
 11 A I don't know their names.
 12 Q Would you look at page 109 of the transcript and read
 13 it to yourself?
 14 A Which one?
 15 Q The other one only has seven pages.
 16 A Okay, this one over here?
 17 Q Yes, sir. Page 109.
 18 A Okay.
 19 Q Does that refresh your recollection, reading that
 20 transcript of the testimony?
 21 A Yes.
 22 Q Well--let me ask you again. Did you in 2004, procure a
 23 couple of street kids and I think that's your exact
 24 words, named Mickey and Chris, to masturbate at the
 25 request of Greg Mitchell?

1 A Yes, okay.
 2 Q Let me ask you again. Did you hire somebody to have a
 3 car burnt?
 4 A No.
 5 Q Didn't happen?
 6 A No, sir.
 7 Q Didn't commit any arsons?
 8 A No, sir.
 9 Q All right. Did you hire a drug trafficker to smuggle
 10 aliens into the United States?
 11 A Yes, sir.
 12 Q Okay. When was that?
 13 A I don't recall a specific date.
 14 Q And they were coming from Mexico into the United
 15 States?
 16 A Yes, sir.
 17 Q And- and you don't know when it was?
 18 A No.
 19 Q Is it also true that in the year 2004, that when you
 20 were in contact with Greg Mitchell. And he wanted to
 21 put something on one of the porn sites that Greg
 22 Mitchell was helping you with, or however you want to
 23 put it, that you decided to go out and find some street
 24 kids that were under 18 years old, and put them on the
 25 videos. Is that correct?

1 A It says nothing about that here on page 109.
 2 Q Sorry?
 3 A On page 109, it says nothing about that.
 4 Q And it didn't happen?
 5 A Did what happen?
 6 Q The recruiting of the street kids?
 7 A I've already told you, yes.
 8 Q Yesterday, you were telling us about your attorney from
 9 Washington, D.C., Steve Ryan. And you mentioned the
 10 firm that he works with in Washington, is that correct?
 11 A (Inaudible).
 12 Q And he represented you in conjunction with you coming
 13 forward to the FBI, coming forward to the Congress, am
 14 I correct?
 15 A I don't understand the question.
 16 Q All right. Did Mr. Ryan go with you when you testified
 17 before the Subcommittee of Congress?
 18 A Yes.
 19 Q And he went as your attorney?
 20 A What?
 21 Q He went as your attorney?
 22 A Yes.
 23 Q And was with you when you talked to the FBI agents, am
 24 I right?
 25 A Yes.

1 Q And you said yesterday -you used a term and I may have
 2 caught it wrong but I think you said that Steve Ryan
 3 worked for you pro bono. Is that what you said?
 4 A That is correct.
 5 Q All right. Pro bono is a Latin word meaning for free,
 6 am I right?
 7 A Yes. I paid him a retainer, but beyond that, yes.
 8 Q Well then it wasn't entirely pro bono.
 9 A Basically I paid him \$10,000 dollars.
 10 Q You paid him or someone else?
 11 A My grandmother.
 12 Q Your grandmother paid him \$10,000 dollars?
 13 A Correct. In order to take care of whatever necessary
 14 flying costs and stuff like that he had. Beyond that
 15 he represents me pro bono.
 16 Q You testified yesterday about a gentleman by the name
 17 of Kurt Eichenwald, am I right?
 18 A (Inaudible).
 19 Q And Kurt Eichenwald when you met him, you later came to
 20 find out that he was a reporter for the New York Times,
 21 am I correct?
 22 A Yes.
 23 Q How did you meet Kurt Eichenwald?
 24 A On the Internet.
 25 Q And on what Internet type of a site were you, when you

- 31 -

1 met Kurt Eichenwald?
 2 A I don't understand the question.
 3 Q Well was it a pornographic site?
 4 A Yes. I ran a pornographic website.
 5 Q All right. You were running a pornographic website,
 6 and Kurt Eichenwald from the New York Times contacted
 7 that website, am I right?
 8 A No.
 9 Q All right, help me out. How did it happen?
 10 A He contacted my screen name.
 11 Q I'm sorry?
 12 A He contacted me via AOL Instant Messenger, which is an
 13 online chat service.
 14 Q All right. And he came on and said he wanted to talk
 15 to you?
 16 A That's correct.
 17 Q And you told us yesterday that you found in talking to
 18 him that he was nice?
 19 A Yes.
 20 Q Wanted to help you?
 21 A Yes.
 22 Q You liked him?
 23 A Nice guy.
 24 Q However, you wanted to charge him- er, you did charge
 25 him \$2,000 dollars just for the privilege of talking to

- 32 -

1 you. Am I right?
 2 A No.
 3 Q All right. What else did Mr. Eichenwald get for the
 4 \$2,000 dollars?
 5 A Nothing. That's- correct.
 6 Q Well then, I'm confused. Maybe we can -we can clarify
 7 it.
 8 A He said -
 9 Q You told Mr. Eichenwald, I'm not going to continue
 10 talking to you unless I get money, right?
 11 A Not in those direct words, but--
 12 Q Well, give me your direct words?
 13 A I don't recall my exact words years ago.
 14 Q Okay. Are mine close?
 15 A Um, I couldn't say.
 16 Q How much talk did Mr. Eichenwald get for \$2,000
 17 dollars?
 18 A He didn't pay for an interview if that's what you are
 19 asking.
 20 Q No. I said, how much talk did he get? How long did
 21 you talk to him for \$2,000?
 22 A I didn't -he didn't pay to speak with me. It wasn't
 23 like he was paying to speak with me. Not like that.
 24 MR. HOWARTH: Mr. Baker.
 25 BY MR. HOWARTH:

- 33 -

1 Q Mr. Berry, I'm handing you three documents. I'd like
 2 you to look very carefully at each one of the three
 3 before I ask you any questions, okay?
 4 A Okay. Okay.
 5 Q Can you tell us what the proposed exhibit number one
 6 is?
 7 A It's a check sent from Mr. Eichenwald to myself.
 8 Q I'm sorry. It's sent from what?
 9 A Mr. Eichenwald to myself.
 10 Q You said it was sent?
 11 A It's a check.
 12 Q Yeah, I understand that. But it was sent to you by
 13 mail as opposed to personally delivered to you or some
 14 other method?
 15 A In fact it was mailed to me.
 16 Q All right. And can you see the date on that check?
 17 A June -I can't read it. It's June something of 2005.
 18 Q All right. And the exhibit- defendant's exhibit -
 19 proposed exhibit two, what is that?
 20 A This is a deposit slip.
 21 Q On whose account?
 22 A My account.
 23 Q What's the date on it?
 24 A I don't know. I don't see a date on here.
 25 Q Maybe I can help ya.

- 34 -

1 A That would be great.
 2 Q I'm just going to direct your attention to the -
 3 A Okay. 6-9-05.
 4 Q - 6-9-05? Does that sound right?
 5 A Okay.
 6 Q Did you deposit Mr. Eichenwald's money on June the 9th
 7 of 2005?
 8 A Yes, sir, I did.
 9 Q You put \$1700 in the bank and took \$300 out for
 10 yourself, am I right?
 11 A Yes, sir, I did.
 12 Q So Mr. Eichenwald had to give you that either on June
 13 the 9th or some time before that, just logically?
 14 A Okay.
 15 Q And would you look at exhibit three please? And can
 16 you tell us what that is?
 17 A Uh, cash-out credit.
 18 Q Does that refer to the same transaction that we are
 19 talking about?
 20 A I don't know. I'm looking. Yes, it does. I believe
 21 so.
 22 Q Okay. And that is another banking transaction as shown
 23 on exhibit three regarding the \$2,000 dollar Eichenwald
 24 check. Am I correct?
 25 A No.

- 35 -

1 A No.
 2 Q All right. And you say you have no plans today, am I
 3 correct?
 4 A That is correct.
 5 Q Did you ever tell Taylor- Taylor's last name is
 6 [REDACTED] isn't it?
 7 A I don't know.
 8 Q Don't know? Do you just know him as Taylor?
 9 A Yes.
 10 Q Did you ever tell Taylor you were planning on making a
 11 book deal?
 12 A I don't recall.
 13 Q Did you ever tell Tim Richards that you were planning
 14 on doing a book deal?
 15 A I don't believe so.
 16 Q You don't believe so. After you met Mr. Eichenwald
 17 and, uh, and you finished your -the TV circuit that,
 18 you know, with Larry King Live and the Today Show and
 19 that. You had--you told us you had a nervous breakdown,
 20 is that right?
 21 A After I saw your defendant in Congress, I had a nervous
 22 breakdown, yes.
 23 Q Okay. And were you hallucinating at all during the
 24 time you had the nervous breakdown?
 25 A Yes.

- 37 -

1 Q Well what is it?
 2 A It shows that I took \$300 dollars cash out.
 3 Q Oh, okay. But that's in the course of depositing the
 4 \$2,000, am I right?
 5 A That's correct.
 6 MR. HOWARTH: Your Honor, I move for the
 7 admission of defendant's proposed exhibits one, two and
 8 three.
 9 MR. BAKER: No objection.
 10 THE COURT: All three are admitted.
 11 (At 10:08 a.m. defendant's proposed exhibit
 12 numbers one, two and three are admitted into
 13 evidence.)
 14 BY MR. HOWARTH:
 15 Q Did Mr. Eichenwald ever give you any other money
 16 whatsoever?
 17 A No.
 18 Q Okay. You told us yesterday that you have no plans for
 19 making a book deal out of this. Am I right?
 20 A That's correct.
 21 Q You were offered \$500,000 dollars as long as you didn't
 22 appear on Oprah?
 23 A I was offered many different book deals.
 24 Q Were they all conditioned on the fact that you don't
 25 appear on Oprah?

- 36 -

1 Q You were seeing things that weren't there?
 2 A I wouldn't say, seeing things that weren't there.
 3 However, I was in an emotional state that wasn't good.
 4 Q Were you in contact with Mr. Eichenwald at that time?
 5 A Yes.
 6 MR. HOWARTH: Mr. Baker, exhibit 33. The one
 7 up on the board, it said (indiscernible). Thank you.
 8 BY MR. HOWARTH:
 9 Q Now, let me just look at this. Do you recognize this?
 10 A Yes.
 11 Q And those -it represents pictures of yourself, am I
 12 correct?
 13 A Correct.
 14 Q And what we would call naked or nude pictures, am I
 15 right?
 16 A Child pornography, yes.
 17 Q Child pornography. Is it your testimony -
 18 THE COURT: Let me interrupt for just a
 19 minute.
 20 MR. HOWARTH: Sure.
 21 THE COURT: Just for clarification of the
 22 jury, so they understand what exhibit you were
 23 referring to?
 24 MR. HOWARTH: Yeah. I just didn't want to put
 25 it up again, Your Honor.

- 38 -

1 THE COURT: That's fine. But I mean the
 2 jurors should know.
 3 MR. HOWARTH: It's a collage of pictures that
 4 was put up on the screen by Mr. Baker and Mr. Ondejko
 5 yesterday, in effect showing exposed -
 6 THE COURT: I was just asking for the exhibit
 7 number.
 8 MR. HOWARTH: Okay.
 9 THE COURT: Just so that if they are taking
 10 notes, they would know exactly what the witness is
 11 referring to, that's all.
 12 MR. HOWARTH: Thirty-three.
 13 THE COURT: Thank you.
 14 MR. HOWARTH: Okay.
 15 BY MR. HOWARTH:
 16 Q Did Mr. Berry (sic) have something to do with
 17 production of that exhibit?
 18 A Did I have something to do with production of this
 19 exhibit? Yes.
 20 Q I'm sorry. I do this way too often. Mr. Gourlay did?
 21 Did Mr. Gourlay have something to do with it?
 22 A Have something to do with what?
 23 Q Exhibit 33?
 24 A Exactly--
 25 Q The collage of pictures?

1 minute, Your Honor?
 2 THE COURT: Yes.
 3 MR. HOWARTH: I don't have any further
 4 questions at this time, Your Honor.
 5 THE COURT: All right. Re-direct.
 6 MR. BAKER: I have a few questions.
 7 RE-DIRECT EXAMINATION
 8 BY MR. BAKER:
 9 Q You testified that you made money from this, is this
 10 money that you somehow saved and still have today?
 11 A No, Your Honor -er, no, sir.
 12 Q And when this all came pretty much to an end, when you
 13 came forward, did you have a pile of money stacked
 14 somewhere?
 15 A I didn't have a cent to my name.
 16 Q Okay. And when you walked away from the book deals,
 17 those are over?
 18 A That's correct.
 19 Q Nobody is offering you deals today, are they?
 20 A No. I have no offers on the table.
 21 Q Okay. Who is Tim Richards? I think you mentioned -
 22 that name came out a little bit on Direct and then you
 23 were asked about whether you talked to Tim Richards -
 24 A Okay.
 25 Q -who is he in this?

1 A I don't know.
 2 Q Don't know one way or the other?
 3 A I don't know if he was involved at that exact moment,
 4 no.
 5 Q Mr. Berry, you told us that at various times, Mr.
 6 Gourlay attempted - er, persuaded you to get out of the
 7 porn business; you already testified to that. I'm just
 8 summarizing, right?
 9 A Okay.
 10 Q You had a girlfriend named Allison and we've had some
 11 chats up or e-mails up of you talking to Allison,
 12 right?
 13 A Yes, sir.
 14 Q And Mr. Gourlay talking to Allison, am I right?
 15 A Yes, sir.
 16 Q Did Allison, your girlfriend, attempt to persuade you
 17 to get out of the pornography business?
 18 A Yes, sir.
 19 Q And you are telling us that even with all their
 20 persuasion, it was only Kurt Eichenwald that could get
 21 you out?
 22 A Throughout the years, there was a number of times where
 23 I tried to get out of the business. But every time
 24 pedophiles and drugs sucked me back in.
 25 MR. HOWARTH: Mm-hmm. If I could have just a

1 A Tim Richards ran a child pornography website involving
 2 another 14 or 13-year-old individual. They were two
 3 gay lovers that spent their life on web camera.
 4 Q Now you indicated that during this process of coming
 5 forward, you were interviewed by the FBI and we've gone
 6 into that. And that you were at some point, asked to
 7 disclose anything you had done wrong. And then after
 8 that there was an immunity agreement.
 9 A Correct.
 10 Q And there has been some talk about insurance fraud
 11 involving a car. Do you know what that is all about?
 12 A Shall I explain it?
 13 Q Please?
 14 A Okay. I attempted to commit insurance fraud with my
 15 car in Mexico. I basically gave someone the keys and
 16 told them to go get rid of it. However, I wasn't very
 17 good at this and the Mexican insurance company never
 18 paid me. So, basically, I just had my car cut up for
 19 nothing.
 20 Q All right.
 21 A I don't even know if that is a crime.
 22 Q Is there an arson involved?
 23 A No, sir.
 24 Q Okay. And then you talked about getting somebody into
 25 the Country? What was that about?

1 A I had a girlfriend at the time who they wanted to come
 2 into the United States for a better life. We decided
 3 that, okay. My friend and I -I had an older friend that
 4 was dating her mother. We all decided to come and move
 5 to Tennessee for a while. Once they got here, they
 6 didn't like the United States and they went back. So
 7 they are back in Mexico now.
 8 Q Now after you disclosing all of this, that wasn't even
 9 a part of the immunity agreement was it? That
 10 particular act of bringing -er, helping them get into
 11 the Country?
 12 A I don't think so.
 13 Q All right. I want to show you what I have marked as
 14 exhibit 36. And for the record, it is a letter to your
 15 attorney, Mr. Ryan. And it's dated September 14, 2005.
 16 And it is a letter sent by an official from the Child
 17 Exploitation and Obscenity Section, Andrew Osterbon
 18 (ph). Again signed, September 14, 2005. And it's
 19 regarding an immunity agreement. Is that- have you
 20 ever seen that letter?
 21 A Yes, sir.
 22 Q All right. And was that gone over with you?
 23 A Yes, sir
 24 Q Okay. And in this letter, it would talk about that,
 25 uh, they wouldn't use the information you provided,

1 testimony or information. If it is determined that Mr.
 2 Berry intentionally has given false, incomplete or
 3 misleading testimony or information, Mr. Berry may be
 4 subject to prosecution, perjury and/or obstruction of
 5 justice."
 6 A That is correct.
 7 Q "Any such prosecution may be premised upon information
 8 provided by Mr. Berry and such information may be used
 9 against him. In particular, as Mr. Berry has
 10 previously provided proffer in this matter on July 25
 11 and 26th, should he ever testify to the contrary in a
 12 material (indiscernible) proffer, (indiscernible) or
 13 inconsistent that the statements that he made in the
 14 proffer may be used against him by the Government as
 15 impeachment and rebuttal evidence."
 16 Do you recall having that read to you or
 17 reading that in the letter?
 18 A Correct. I read that.
 19 Q All right. And it goes on and on, and one of the
 20 themes are that if you are not truthful, if you are not
 21 accurate, or what have you, you are subject to
 22 prosecution for perjury or obstruction of justice.
 23 That these things could be used against you. Is that
 24 correct?
 25 A That is correct, sir.

1 against you, for -and they list the different offenses,
 2 child pornography, money laundering, not paying taxes
 3 and any kind of well -there's that and anything having
 4 to do with the child pornography. And that is going to
 5 be a reference so when you turned 18, you were trying
 6 to bring Taylor into this?
 7 A That is correct.
 8 Q Okay. And then it goes on to say, does it not, that
 9 "Mr. Berry shall truthfully disclose all information
 10 concerning all matters requested of him to the
 11 Department of Justice and to the FBI, and further if
 12 requested, shall truthfully testify before the Grand
 13 Jury. And that any trial or Court proceeding with
 14 respect to any matter about which the Department of
 15 Justice or any Federal law enforcement agency may
 16 request his testimony."
 17 A That's correct.
 18 Q All right. And it goes on and there is a lot of other
 19 amplification. And I'm going to just quote from the
 20 agreement and ask if this is (indiscernible) with your
 21 understanding of what the agreement was?
 22 The quote is "It is further understood that
 23 Mr. Berry must, at all times, give complete, truthful,
 24 and accurate information and testimony. And must not
 25 at any time, give false, incomplete or misleading

1 Q And have you testified as best you can in all of these
 2 proceedings accurately?
 3 A Yes, sir?
 4 Q Now, was there any such agreement entered into with
 5 anybody in the State of Michigan?
 6 A No.
 7 Q Okay. And so you have been testifying in this case
 8 without any agreement whatsoever. Would that be fair
 9 to say?
 10 A Yes.
 11 Q Now when this lawyer was obtained for you, and when you
 12 came forward, would it be fair to say you were knockin'
 13 at the door of the Federal Government trying to give
 14 them information?
 15 A That's correct.
 16 Q All right. There wasn't some case on you and you were
 17 then now saying, hey. Give me immunity?
 18 A Before I went to the Federal Government to tell them
 19 about my story, they didn't even know I existed.
 20 Q You were coming forward and Kurt Eichenwald and the
 21 attorneys, or whatever, began to handle that for you.
 22 And made the request and obtained the immunity is that
 23 right? Is that something that you asked them to do?
 24 A No.
 25 Q Now you were asked to look at page 109 of the exam

1 transcript. And I think this was in connection with
 2 the questions about you getting in two street kids to
 3 appear on camera, naked. And in that connection, Mr.
 4 Howarth asked you to read page 109 of the transcript.
 5 And -
 6 MR. HOWARTH: Could I get my -could I get my
 7 transcript back, Mr. Baker? It's up- it's still up
 8 there.
 9 BY MR. BAKER:
 10 Q And you were asked to look at these questions and
 11 answers about a particular individual that was being
 12 talked about at the exam. Do you recall being asked,
 13 just a little while ago, to go through those passages
 14 by Mr. Howarth?
 15 A Yes, sir.
 16 Q Who were you talking about?
 17 A I was talking about Taylor here.
 18 Q Okay. And Taylor is the individual that you talked
 19 about on Direct examination?
 20 A Correct.
 21 Q And he's the individual, in fact, that you were
 22 concerned about because you believed he was in line to
 23 get molested by -
 24 A Correct.
 25 Q - Tim Richards, is that right?

1 about continuing on the web cam, didn't he say, well if
 2 I were you, I'd milk it for all it was worth?
 3 MR. HOWARTH: No- excuse me, Mr. Baker. But,
 4 Your Honor, these are leading questions.
 5 THE COURT: Sustain the objection to the last
 6 question that was asked.
 7 MR. BAKER: All right.
 8 BY MR. BAKER:
 9 Q Do you recall him saying something in the chats?
 10 A In a chat conversation I had with Ken Gourlay, his
 11 exact words were, I would milk the cam for all it's
 12 worth. At least for a couple of years anyway.
 13 MR. BAKER: I have nothing further.
 14 THE COURT: All right. Re-cross.
 15 RE-CROSS EXAMINATION
 16 BY MR. HOWARTH;
 17 Q Mr. Berry, you looked at the People's proposed exhibit
 18 number 36? That's the immunity letter, am I correct?
 19 A That's correct.
 20 Q And on the last page of that letter, is your signature.
 21 Is that not correct?
 22 A That's correct.
 23 Q And you are quite familiar with this document, aren't
 24 you?
 25 A I've read it, yes.

1 A No. By Mr. Greg Mitchell.
 2 Q Okay, by Mr. Greg Mitchell. Who, by the way, became -
 3 got charged in all of this, is that right?
 4 A That is correct.
 5 Q (Indiscernible).
 6 A Yes.
 7 Q Now you testified that there were times, from time to
 8 time, Mr. Gourlay would make statements to you about
 9 his concerns about you appearing on camera. Did he
 10 also express to you that he was jealous?
 11 A Yes.
 12 Q And we saw that in some of the chats, did we not,
 13 yesterday when we went through them.
 14 A Yes, sir.
 15 Q And did he indicate to you that he just didn't want you
 16 on camera because he didn't want other people seeing
 17 you? He didn't like sharing you in that way?
 18 A That's correct.
 19 Q But when it came down to it, he programmed a member
 20 section in each website, did he not?
 21 A That's correct.
 22 Q And he did all the other (indiscernible). Am I
 23 correct?
 24 A Yes, sir.
 25 Q And in one of the chats when it was being discussed

1 Q And this document comes from the United States
 2 Department of Justice, am I right?
 3 A I believe so. In the Obscenity Section.
 4 Q Yeah. It deals with Federal crimes, am I right?
 5 A I believe so, yes.
 6 Q And among the Federal crimes that you were going to get
 7 immunity for, as Mr. Baker has already pointed out, one
 8 of them was distributing child pornography, is that
 9 correct?
 10 A Yes.
 11 Q And in persisting or pertaining to the enticement of
 12 minors to engage in unlawful sexual activity, is that
 13 right?
 14 A In regards to Taylor, yes.
 15 Q Uh-huh. And in failure to report incomes and pay
 16 taxes, is that right?
 17 A Yes.
 18 Q And, as a matter of fact, you said you don't have the
 19 money any more, but you never paid any Federal, State
 20 or local taxes on that money, did you?
 21 A As a matter of fact, I'm not sure if I had to pay
 22 taxes. I'm not -I was in Mexico at the time and I was
 23 underage, so I never paid taxes.
 24 Q Part of the time that you were doing the pornography
 25 business, you were in the State of California?

1 A Yes.

2 Q And then it says, as well as other violations as may

3 have been disclosed by Mr. Berry, during the proffer of

4 July 25 and July 26, 2005, which is what we went into,

5 am I right?

6 A I didn't understand the question.

7 Q Okay. Another thing you got immunity for was anything

8 you were going to tell the FBI on this document that I

9 showed you, this 302 document. Am I right?

10 A All right.

11 Q Mr. Berry, isn't it a fact that when you sat down with

12 the Federal FBI agent and your attorney, you talked to

13 them about a lot of different people, didn't you?

14 A Yes.

15 Q Gill -Gilleo Tunno.

16 A Geo Tunno.

17 Q Geo, I'm sorry. What is it? G-I-L?

18 A G-I-L-O, or something like that. He went by the name

19 of Anthony.

20 Q Anthony? Yes. You mentioned Anthony yesterday in your

21 testimony, didn't you? And you talked about Mr. Tunno,

22 T-U-N-N-O?

23 A I believe so

24 Q Yeah. And you talked to the FBI about him?

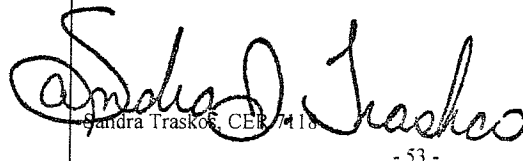
25 A Yes.

COUNTY OF WASHTENAW)ss.
STATE OF MICHIGAN)

I certify that this transcript consisting of 53 pages is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable Archie C. Brown as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: May 8, 2007


Sandra Traskof, CER #118

1 Q Talked to the FBI about Greg Mitchell?

2 A Yes.

3 Q Talked to the FBI about your father, Kanute (ph)?

4 A Newt, yes.

5 Q And, um, talked to them about Taylor?

6 A Yes.

7 Q And as a matter of fact, you didn't tell the FBI

8 anything about Ken Gourlay in those interviews those

9 two days, did you?

10 A In the first meetings, no. I thought he was my friend.

11 I was confused.

12 Q You thought he was your friend on July 25 and July 26,

13 2005?

14 A I had messed with my head a lot.

15 MR. HOWARTH: Nothing further.

16 MR. BAKER: Nothing.

17 THE COURT: You may step down.

18 (At 10:29 a.m., witness is excused.)

19 * * * * *

20

21

22

23

24

25