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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

PEOPLE OF THE STATE OF MICHIGAN,

v

No. 06-877-FH

KENNETH RICHARD GOURLAY,

Defendant./

EXCERPT OF JURY TRIAL - TESTIMONY OF KURT EICHENWALD

BEFORE THE HONORABLE ARCHIE C. BROWN

Ann Arbor, Michigan - Wednesday, March 7, 2007

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1

TABLE OF CONTENTS

2

PAGE:

3 WITNESSES: PEOPLE

4 KURT EICHENWALD

5 Direct examination by Mr. Baker..... 3

6 EXHIBITS:

RECEIVED:

7 None offered.

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Ann Arbor, Michigan
Wednesday, March 7,

2007 - 10:46 a.m.

* * * * *

THE COURT: Would you
raise your right hand to be sworn, sir?

THE CLERK: Do you
solemnly swear or affirm to tell the truth, the whole
truth and nothing but the truth?

MR. EICHENWALD: I
do.

KURT EICHENWALD

called as a witness at 10:46 a.m., testified as
follows:

THE COURT: Come over
here and have a seat in the witness chair. And once
you get seated, will you state and spell your name for
the record?

THE WITNESS: My name
is Kurt Eichenwald. It is K-U-R-T
E-I-C-H-E-N-W-A-L-D.

THE COURT: Thank
you. You may proceed.

DIRECT EXAMINATION

BY MR. BAKER:

1 Q Mr. Eichenwald, could you begin by telling us what you
2 do for a living?

3 A I'm a journalist.

4 Q And did you in that capacity at one time work for the
5 New York Times?

6 A Yes, I did.

7 Q And how long did you have that association?

8 A I worked for the New York Times continuously from June
9 of 1986 until October of 2006, so a little more than 20
10 years. I also worked for them in the summer of 1985,
11 and left the Times to work as a research assistant for
12 the then Chief Washington Correspondent, Hedrick Smith,
13 on a book he was writing.

14 Q And what sorts of stories did you cover and write for
15 the New York Times at least in the latter half of your
16 career there?

17 A Beginning about 1992--I had always been with the
18 Financial Section of the Times from 1988 to 1992
19 covering Wall Street. In 1992, I began doing
20 investigative projects on business. Those related
21 usually to corporate scandals; scandals of companies
22 like Columbia HCA (ph), Texaco, of course the ones
23 everyone knows, Enron, Arthur Anderson, Worldcom, a
24 series of corporate scandals. Sometimes I would go
25 into other areas, but that was the primary area.

1 Q And in fact are you an author?

2 A I am an author, yes.

3 Q And how many books have you written?

4 A I have also written three books. And I have also
5 written a portion of a fourth book about investment
6 advice.

7 Q Okay. And did you write a book about the Enron
8 situation and that whole case?

9 A Yes, I did. I wrote a book called Conspiracy of Fools
10 that was published in 2005.

11 Q Now actually I want you to cast your mind back to 2005,
12 to the period of time where you had just come back from
13 a book tour, promoting that particular book. What were
14 you--what goal did you set out for yourself after
15 returning from that tour, in terms of your work with
16 the New York Times? What was your plan and thoughts
17 once you got back before your next project?

18 A Well it--it was fairly complicated, because when I
19 returned from my book tour--Conspiracy of Fools was a
20 fairly successful book; it hit the New York Times best
21 seller list on it's first day of publication. And my
22 publisher was very delighted with that fact. And, in
23 fact, wanted me to become a full-time author. And as a
24 result, I was offered a book contract for a subsequent
25 book about Intelligence and Terrorism that was going to

1 pay--it was--compared to any book I've done, it was a
2 very sizeable advance. And they told me the idea was
3 they wanted to pay me enough to leave the New York
4 Times.

5 I wasn't ready to
6 make that decision. I had been at the New York Times
7 for 20 years. It was a very hard idea for me to leave
8 the New York Times. And I was casting around for
9 stories while I was contemplating that decision of
10 whether or not I should leave. I wrote a story about
11 a--an individual--a couple of brothers in Texas who
12 were having a business dispute. And I was working on a
13 story in June of 2005, about a public company that was
14 just coming public that did online Poker, and the fact
15 that it was being operated by people who were fairly
16 sleazy.

17 But I was also
18 searching at that time for-- basically I wanted to
19 broaden my position. I wanted to--to do stories from
20 overseas, which was something I thought I can do that
21 at the Times and I can't do that in books. And so I
22 was looking for something international that I might be
23 able to do.

24 Q Now let me just jump ahead. In the course of your work
25 and in the course of your personal endeavors, you

1 ultimately met a young man by the name of Justin Berry,
2 is that correct?

3 A Yes.

29 Q All right. Now I want to go back and through your
30 testimony, track how this meeting ultimately came to
31 be, how your paths ultimately crossed. So let's go
32 back to the point where you are seeking to do some sort
33 of story about international matters?

34 Q I was looking for something international. There is a-
35 -there is an International police organization-called
36 INTERPOL. And they will frequently issue fraud alerts
37 pertaining to a particular type of financial fraud that
38 is going on somewhere in the world. Reporters--being a
39 reporter is oftentimes like, you know, sifting through
40 the barn looking for something. And I was sifting.
41 And I did a Google search for INTERPOL Fraud Alerts.
42 Actually, the phrase I entered in the Google search
43 engine was INTERPOL fraud alert and investigations, and
44 began looking at the items that had come up.

45 One of the items
46 that came up was a posting that purported to be from a
47 Tallahassee law firm whose name escapes me. If you
48 need--if you need it, I can get it for you. And this
49 purported law firm, the posting said that there was a
50 INTERPOL fraud investigation in coordination with some

1 State Attorneys General and some other countries,
2 looking into criminal activities involving these
3 websites. And it had the list of--again, I'd have to
4 look at the posting again but I think it was like 10 or
5 11 websites.

6 The posting went on
7 to say that the investigation had been started by a
8 member of our office who obtained documentation--I
9 mean, it was--it was very clear that this law firm was
10 the instigator of the fraud investigation. That the
11 law firm had the documentation and that the law firm
12 was willing to talk about it. As a reporter, that's
13 jackpot. That's-- there's an investigation going on.
14 These people have the documents. They want to talk
15 about it. I want to figure out what this is and then
16 I'm going to give them a call.

17 Q Did you visit some of these websites?

18 A The first--I am not a reporter who likes to call people
19 blind and go, gee, what are you doing? And so I wanted
20 to understand something about what we were talking
21 about before I called them. So I began going down the
22 list of names of websites and looking them up. I can
23 remember some. One was Neova.net, or Neova.net or
24 Neova.com, I can't remember, which was a credit card
25 processing company.

1 someone posted a link or made a reference to that site,
2 those postings will come up.

3 I did a search for
4 mexicofriends as a single word and came across postings
5 by individuals talking about someone named Justin. And
6 it was very clear that whoever this Justin person was,
7 was having some sort of sexual exploits portrayed on
8 the Internet. And so to me, this was like, okay. This
9 is just another one of these porn sites.

10 At that point, I was
11 almost done but there is one other thing I do as a
12 reporter. There is a wonderful site called
13 Archive.org. And the way Archive works, they basically
14 have an automatic system that is going around the
15 Internet, for lack of a better term, photographing Web
16 pages and storing them. So that once a Web page is
17 gone, you can go to Archive.org, enter the Web page,
18 go--you know, enter that name, go into their files and
19 see what that site looked like when it existed.

20 And so I went in
21 there. I still had some to find; I wasn't able to
22 locate some of them. I typed in mexicofriends. There
23 were pages that existed. I clicked on a page for I
24 believe October of 2003, so that would have been what
25 that page looked like in October of 2003. And up

1 popped an image. It was just a face, like something
2 you would see in a school year book. But it was an
3 image of a 14-year-old boy, somebody who was clearly
4 underage. Somebody who, in truth, and this was a very
5 important thing, he looked a lot like my oldest son who
6 was 13 at the time.

7
8 And I had my notes
9 that I had been compiling as I was working, and I
10 looked down. There was mexicofriends, and Justin, and
11 sex. I looked back at the screen and there was the
12 image of the boy. There was another image down below
13 about, contact us. And I realized they were referring
14 to this person as Justin. I mean it wasn't flat out
15 this is Justin. But it was very clear that the image I
16 was looking at, that the porn star I was writing about
17 in my notes was this boy. And I was horrified. I was
18 stunned. And at that moment, it became--I now know
19 what this is about. This is an INTERPOL child porn
20 investigation. Nobody could look at this image knowing
21 that it was a porn site and not conclude this is about
22 child porn.

23 And so I stopped my
24 reporting. I was done. I knew what the law firm was
25 dealing with and so I went back to the name of the law
firm in Tallahassee. I entered their name into the

1 Internet and the only thing that came up was the
2 posting I had found.

3 I went into an
4 electronic version of a database called Martindale
5 Hubbell which lists all lawyers, all law firms and
6 entered the name of the law firm, and nothing came up.
7 I called Tallahassee Information and asked for the name
8 of this law firm; there was no such law firm. And at
9 that moment, I realized the posting was a fraud.

10 Q There was no INTERPOL investigation--(indiscernible)?

11 A There was no INTERPOL Investigation. This entire thing
12 had been a charade. It is one of the dangers of working
13 off of the Internet. There are people who put false
14 material out there for whatever purpose they have, you
15 know. I had wasted a couple hours--well, if I hadn't
16 found that other thing, I would think I had wasted a
17 couple of hours.

18 But I was then in a
19 horrible situation. Because now even though I couldn't
20 prove it, I strongly believed that at least as of 2003,
21 there had been a child somewhere named Justin who was
22 being exploited online.

23 Q Now you indicated--how many children do you have?

24 A Three, three boys.

25 Q And, uh, and what is your wife's profession?

1 A My wife is a doctor.

2 Q And are the three boys still living under the same roof
3 with you and--

4 A Yes.

5 Q They haven't gone out on their own yet?

6 A No. They are now--at that--at that point, they were
7 13, 10 and seven.

8 Q Did you take steps, then, to try and investigate
9 further this person, Justin? Or to make some sort of
10 contact?

11 A Well, at that point there was no longer a story. There
12 was no investigation. I don't write about child porn,
13 at least I didn't. And the only issue that existed
14 was, I believed this thing was out there; that there
15 was a kid somewhere and I couldn't turn away from it.
16 And so while working on--and actually it was aft--it
17 was after this, I began doing the Poker--International
18 Poker website story.

19 But while I was
20 working on that for the Times, as a private citizen, I
21 began trying to locate Justin. Which--I don't know if
22 you have ever tried to find somebody with one name on
23 the Internet, in-- somewhere in the world. It is
24 exceptionally hard.

25 Q So how did you proceed to do that?

1 A I followed up, first, on my search of mexicofriends.
2 You know, the single name Google search. And I found a
3 page--I want to say it was on some site affiliated with
4 Las Vegas that had an e-mail address. And I sent an e-
5 mail to that address, the site--the e-mail--I now know
6 that--that e-mail address hadn't been used in years. I
7 was looking for anything I could find. I tried to
8 figure out, you know, if I could know how the name,
9 mexicofriends, had been registered. At the time, I was
10 not a computer guy. I didn't know how to gain
11 information on registration.

12 And I went back to
13 Archive.org and started looking through the pages. And
14 I realized on one of the page (sic) there was something
15 that said Aim, colon, compu--it may have been a colon.
16 It was just Aim, computernerdmi. I did not know what
17 Aim was. I knew AOL Instant Messenger and that's what
18 AIM is. And I realized nerdmi was supposed to be the
19 instant message address for Justin or whoever was
20 pretending to be Justin.

21 So as a reporter
22 from the Times, I had my own, you know, New York Times
23 e-mail; I wasn't on AOL a lot. But I decided what I
24 would--excuse me.

1 (At 11:04 a.m., testimony is interrupted by
2 ringing cell phone of witness.)

3 THE WITNESS: I
4 apologize to the Court. I forgot to turn off my phone
5 and will do so. I realized that this was the sole lead
6 that I had. So I signed onto AOL. And when
7 you--again, at that point I didn't know you could just
8 go onto AIM. I did--which was an independent instant
9 messenger thing. I thought you had to be on AOL large
10 scale. I signed onto AOL and I entered computernerdmi
11 into what's called a buddy list, so that if that person
12 with that screen name signed on anywhere, it would
13 light up and tell me that person was there.

14 I proceeded doing my
15 work. I don't know how long it took, but at some point
16 whatever the sound was that goes off, that tells you
17 someone signed on, someone signed on and it was
18 computernerdmi. I clicked on it and sent the person a
19 message.

20 Q What was the message you sent?

21 A I said, how old are you?

22 Q And did you get a reply?

23 A I did not. And in fact, I got an indication I had been
24 blocked from talking to him anymore.

1 Q Okay. Did you make some decision to try and make some
2 contact after that?

3 A At that point, the only lead I had was computernerdmi.
4 And I had exhausted everything else I could think of.
5 So I signed on with another screen name on AOL. It may
6 have been my wife's, I'm not sure. But it was another
7 screen name. And I put computernerdmi on again.

8 And at some point in
9 the future, saw that he was in fact--whoever
10 computernerdmi was, was on again. And sent another
11 instant message. For the life of me, I can't remember
12 what it was I said; I know it wasn't, how old are you?
13 But whatever it was I said, I was immediately blocked.
14 And it was--

15 Q Did you conclude you were not saying the right thing?

16 A I was not saying the right things. So at that point, I
17 went back to what I had been doing. My wife and I were
18 talking about this. It was--it was tearing me up. And
19 I at one point found, finally found, the next big lead
20 which was--there was something--you know the website
21 Yahoo? You can establish as an individual a group
22 site. And I found a Yahoo group's site that was a fan
23 site for Justin. And on the front of it was another
24 picture of the same kid looking a little bit older.
25 Again he was, you know, just wearing like a sweater or

1 a sweatshirt. There was nothing--there was nothing
2 improper about the picture.

3 And I looked at the
4 site. What I remember vividly is, it had on the lower
5 left-hand corner, it said members--I don't--you know,
6 total members or something like that. It counted the
7 number of people who were subscribers to this site.
8 And the number was in excess of 350.

9 Q You mean that were on the site at that moment?

10 A No. People who had gone to the trouble of registering
11 for this site to talk about this person, Justin.

12 Q Just to talk about the person? Not to necessarily see
13 the person and that's--

14 A No.

15 Q --but that's just to talk about--

16 A Just to talk about.

17 Q Okay.

18 A I mean, that's as far as I knew. I signed up for that
19 site. And in fact I do know that when I contacted them
20 the second time, it was through my wife's e-mail
21 because I used my wife's e-mail again. So I was still
22 using that.

23 And I signed up for
24 that site, found a message board which dated back
25 years. And went to the beginning and began reading the

1 messages that had been posted relating to this person,
2 Justin. By the time--I didn't get through all of it
3 because there was a lot. But certainly after reading a
4 large number of messages, I was a little less
5 concerned. Because I believed that Justin had to be
6 fictitious. The story was too absurd in my view.

7 It was Justin is in
8 California, Justin is in Michigan, Justin is in
9 Virginia, Justin is in Nevada, Justin is in Mexico,
10 Justin is out of the business, Justin is back in the
11 business, Justin has found God. His porn site is now a
12 bible site. I mean there were so many things that just
13 seemed--and I actually said to Theresa, my wife, these
14 people created the biggest fiction in history. It was
15 absurd. But I still had this nagging kernel that, you
16 know, maybe the story isn't true but maybe there
17 really--there's a kid's picture here. So what is
18 actually happening with this particular kid?

19 Q Did you try and message again and--

20 A Well this time I talked about it more. And thought
21 about it more, I didn't just act off impulse. And it
22 was actually Theresa who came up with what to say.

23 Q And what did you--

24 A I signed on to--with a third screen name. And with the
25 third screen name, I said--I sent him a message that

1 my job? He asked me what do I do? And I wrote back.
2 I write music.

3 And we spent most of
4 the next whatever period of time with them
5 trying--trying to figure out who I was. And in fact
6 they told me at one point, they concluded that I was a
7 member of the Eagles, the rock band from the 70's.
8 Which I just thought was kind of an interesting
9 conclusion. That an arbitrary person you meet who
10 writes music, ends up being in the Eagles.

11 The reason I am
12 saying they is because it became very clear to me
13 within a few conversations that I was not talking to
14 one person. A conversation would be held--I'm sorry.

15 Q Well, Yeah. I was going to ask, what would you use to
16 conclude that there was somebody, more than one--more
17 than one person?

18 A Well remember. I'm looking at these conversations for
19 clues. I'm trying to figure out where these people
20 are, or this person is--if this person is a child. So
21 I am also looking at how they are talking to me.
22 Neither person--I never had a conversation where it was
23 just flat out, this is a child.

24 But there was one
25 person that was talking to me in--I hate to say this,

1 lingo I didn't understand, you know? One of the first,
2 it was like--I don't remember what phrase was
3 used--what phrases were used that I didn't get. But
4 there were phrases like TTYL, which I now know means
5 talk to you later. The only one I knew was LOL which
6 was laugh out loud. But nobody seemed to use that.
7 What one person used a lot, somebody else didn't.

8 One person--I would
9 have a conversation with one person, then I'd be
10 talking to the person who didn't use a lot of them and
11 instead wrote in sentences. And that person wouldn't
12 recall something that had been said two days earlier.
13 And so that made me begin to think that, again, this
14 was fake. That there were a series of people posing as
15 somebody named Justin.

16 Q Was there requests along and during the course of these
17 communications, requests for money?

18 A Yes.

19 Q And tell us about that?

20 A Well the first time I was asked for money, they--I was
21 asked would I be willing to donate? And, um, my
22 response was to what? And the reply was, to me. And I
23 didn't--I thought the word donate was a very odd term
24 to use. I have subsequently learned that people in the
25 Web--people and kids--I know mostly about kids in the

1 Webcam business, ask for donations from the people who
2 are visiting their sites. And those donations are met
3 to go not only for equipment and broadband time, but
4 also to keep the kids happy. And so when they are
5 asking for donations, you know, my initial responses
6 were, no.

7 Q All right. Did you come to a decision to make a
8 donation?

9 A Yes.

10 Q And--

11 A Well, I came to a decision to send money.

12 Q All right. And tell us about that, how you did it and
13 what your purpose was?

14 A Well, let's start again. I was not acting at this time
15 as a reporter. I didn't think I--I still don't know
16 what anyone would conceive the news story would be, you
17 know? Child pornography exists and child pornography
18 involves children. So the fact that there is a child
19 somewhere caught up in child pornography is not a story
20 that I would ever write. I did, however, want to know
21 for sure if there was this child being abused.

22 The turning point
23 actually came when there was a posting by the
24 individual who ran the Yahoo message site. I now know
25 that individual is a fellow by the name of Greg

1 Mitchell, who lived in Dublin, Virginia. But at the
2 time, I didn't know who he was. There were
3 insinuations by the person running that site that he
4 was in physical contact with this Justin person. And
5 that he had some level of connection to him.

6 The posting that
7 went up in early June of two thous--or at least that I
8 saw in early June of 2005, I believe it went up about
9 the time I saw it, was a posting from the individual
10 running the Yahoo message site offering Justin for sale
11 to the highest bidder for the night. They gave a
12 geographic requirement that the person had to be on the
13 Eastern Seaboard. I don't remember the exact
14 geographic requirement, but it was something like from
15 Virginia to New York. I mean it was a fairly narrow
16 area. And that told me two things--no, three things.

17 One, these people
18 are in the United States and on the Eastern Seaboard.
19 Two, if there isn't a Justin, how do you do this
20 transaction? I don't know if he is a minor or not.
21 And three, they were desperate for money.

22 My wife and I
23 discussed this. And at the time--I give a lot of
24 speeches on corporate fraud. And at the time, I had a
25 number of speeches lined up. And there was one speech

1 raised it in hopes of (indiscernible), but they
2 started--and again, I don't know which of the two I was
3 talking to at the time. I now know that the other
4 person was Greg Mitchell. And sometimes I was talking
5 to Justin and sometimes I was talking to Greg Mitchell.
6 But I mentioned that I would be willing to send a very
7 sizeable sum of money to them.

8 Q Was it important to you how you would get this money
9 to--

10 A How I would get it?

11 Q How you would make the transfer--

12 A How I would send it to them?

13 Q Yes.

14 A Yes. That was the key to everything--was how I was
15 going to send it to them.

16 Q All right. What were the choices and what did you
17 finally do--

18 A Apparently everybody who makes donations--I now know
19 everybody who makes donations does so through--largely
20 through two mechanisms. One through an online pay
21 system called PayPal, where you are basically sending
22 credit card dollars or debit dollars to another
23 account. The other method would be through a Western
24 Union payment.

1 A Yes.

2 Q And in what form were you sending it?

3 A I was sending them--I was gonna' send them a check.
4 And I sent them--it was a bank check. And I told them
5 in order to send you a bank check, I need a name. I
6 need a name to put on the check. I'm not sending a
7 blank check. I won't be able to get one issued if it
8 is a blank check. I need a name.

9 And I was given a
10 name, Justin Berry. That told me there was in fact at
11 least a person named Justin. And it had to be the real
12 name because if I sent it to some fictitious Internet
13 name, they wouldn't be able to cash the check. Then I
14 needed an address for the name to go to--I'm sorry, for
15 the check to go to. And I was given an address in
16 Dublin, Virginia

17 Q You get the check and you send it to Dublin to--

18 A A lot happens before that. I have a name. I have an
19 address. They are asking for it from Fed Ex which I
20 agree to do. And the first thing I do--I am an
21 investigative reporter; I know how to trace down homes,
22 locations, people. The first thing I do is, I trace
23 down the address in Dublin, Virginia. I find that it
24 is connected to an individual named Greg Mitchell.

1 I try and find a
2 connection between anyone named Justin Berry and that
3 address. If I had found a connect--for example, if I
4 had found there was a child named Justin, who was 14
5 years old living at that address, I would have called
6 the police. I would have been done. I would have had
7 my proof. But there wasn't. There was no one named
8 Justin connected to that--to that address.

9 Justin had mentioned
10 in our conversations earlier that he had been raised in
11 California. So--and the searches I am doing are
12 through something called Nexis. So I'm doing Nexis
13 searches--it's called Deep Nexis searches. So I'm
14 doing Deep Nexis searches for everyone named Justin
15 Berry in California. I found a Justin Berry who lived
16 in San Diego who, based on the records I had, was 19 or
17 20 years old. And I thought, is this him? I mean,
18 Justin Berry. His name wasn't, you know, Onswung
19 Malosavich (ph). I mean. Justin Berry is not that
20 unusual a name. And so by the end of that afternoon, I
21 was stumped.

22 I did do a search
23 for Greg Mitchell in the Virginia sex offender
24 registries; didn't find him. He--it ends up he
25 had--had a child porn conviction years earlier, but

1 Q Did you get in that information something that helped
2 you actually find Justin Berry?

3 A Well I was told that he lived in Mazatlan, Mexico.
4 Which again coincided with what I had seen on the--on
5 the Yahoo site. But I also got information that wasn't
6 true. I was told that Greg was his dad. I was told--
7 and I don't know if it was Greg who told me that or if
8 it was Justin who told me that. I was told just an
9 assortment of things. It was like well, if you live in
10 Mexico, why am I--why did the check go to Virginia?
11 And, you know, it--there was just a series of
12 conversations like that.

13 But then there came
14 a day, it was either June 24, or June 25. By that
15 time, Greg Mitchell had emerged as a person. He was
16 instant messaging me directly. And Greg--Greg sent me
17 a message. And this is a message that really, still to
18 this day, upsets me because I can't comprehend how
19 people think like this. At that point, I had been told
20 that Greg--that Justin Berry was 18 years old. It was
21 very clear and he confessed--admitted to being a very
22 serious drug addict; that he was addicted both to
23 Cocaine and to Marijuana. I didn't know people could
24 be addicted to Marijuana. But it turns up, yes, they
25 can.

1 get in my car. If he shows up and has a bag and the
2 bag has a weapon in it, the bag has to go in the trunk.
3 If he has a weapon on himself that I can't see, um, the
4 two-seater car--it was a convertible, the top was down.
5 And I also would be able to like assess the situation.
6 Do I really have concerns about who this person is when
7 he shows up?

8 I show up--now
9 again, establishing that I was not acting as a reporter
10 at this time. That car was paid for out of our money.
11 I did not make the reservation through the New York
12 Times. The travel office, I went online and found the
13 car I wanted to rent and called that place and we paid
14 for it. And I showed up at LAX, Las Angeles Airport, at
15 the appointed time. And this person emerged from the
16 airport. And--

17 Q How did you arrange to find each other that he would
18 know who you were?

19 A Well he told me what flight he was coming in on. And
20 we--at this point, I had his cell phone number. And so
21 I called him when he was coming in. And there was a--
22 apparently he was watching me from a distance while I
23 was trying to--you know, he was as concerned about me
24 as I was about him. And he made an assessment and I
25 finally appeared.

1 shows me his driver's license. It's a real California
2 driver's license. He is over the age of 18. I look at
3 the address and it's an address in Bakersfield,
4 California. I believe it was Kenross (ph) Court. So
5 now I can go back and nail down who are his parents,
6 where are--you know, what's going on.

7 He gets into the
8 car--I tell him to get in the car. And I decided I
9 wasn't going to say anything until we pulled away, so
10 that I was sure we were away from any possibility of
11 anybody else, you know, popping out of the woodwork.
12 And we pulled away and drove about a block.

13 Q And what is the first thing you say to him?

14 A I said--this was a bit crafted. I said, I have
15 something to tell you that is going to shock you. I am
16 not gay. I am married with three children. My wife
17 knows I am here and my oldest son knows I am here. I--
18 actually by this point, we had start--we had at some
19 point used this as an abject lesson for my teenager of
20 the dangers of the Internet. And so he already knew
21 that I was going to try and help this kid. And
22 Justin's--Justin was speechless because it wasn't what
23 he expected. And he--it was--I'm not sure if he was
24 scared. But it was--he just couldn't--it was like he
25 couldn't process this. You know, his was a life where

1 agony and despair. I mean it was a very, very
2 heart-wrenching evening.

3 Q Now, how does that evening come to an end? Do you part
4 ways at the end of that evening or what happens?

5 A He checks into the hotel. He had a key ring that had
6 these little credit card things on them. And got a
7 room at the hotel. He stayed in his room and I stayed
8 in mine. The next morning--I don't remember who called
9 who, but we ended up on the telephone and said, okay.
10 Then let's get back together. And--

11 Q Let me ask you this? How many days do you spend with
12 him at this point?

13 A Two. It's June 30 and July 1.

14 Q Okay. So it's the first day you meet and then--

15 A It's late afternoon of June 30 until late afternoon of
16 July 1.

17 Q July 1. And then you go back to--where is it you were
18 living at that time?

19 A In Dallas, Texas.

20 Q So you go back to Dallas at that time? During that day,
21 June--of July 1, in a word or if you could just
22 characterize what's--what are you talking about with
23 him during that time?

24 A It's hard to say in a word because there were a lot of
25 things. I mean, in the morning, one of the things I

1 don't debase yourself. You are not--I know you have
2 been around men for years who are treating you like
3 this, treating you like a piece of meat. You are not a
4 piece of meat and you don't have to do this anymore,
5 that was the morning.

6 He wanted to show me
7 what his world was like, his Internet world was like.
8 And so we went to my room and I had a desk there. And
9 he turned on the computer and loaded--this is what I
10 learned about AIM, loaded AIM onto my computer. And he
11 said. You don't need to go to AOL. You can just load
12 this one little program; it was a messenger program.
13 Signed on as computernerdmi. And this is--I was amazed
14 when I realized what happened. How--I was amazed that
15 he ever talked back to me.

16 Because when he
17 signed on, over the course of 15 seconds, just--it was
18 pop, pop, pop, pop, pop, pop, pop, pop. All of these
19 messages popped up on his screen from people sending
20 him a message. They saw him appear and they sent him a
21 message. And they were a series of--you know, some of
22 them were just sort of, hey, Justin. How ya doin?
23 They were--some of them were--were unbelievably
24 debasing. He did a couple of back and forths with
25 people, and there was somebody who--do you mind if I--

1 Q What did they say? Yes, what?

2 A Somebody who--who asked him the furthest distance he
3 had ever ejaculated? That's not the way they put it.

4 He then started
5 talking about--he started talking to people. He said
6 this is another cam kid. I said, another one? There's
7 more than one? And he was talk--the one I remember
8 very, very clearly was a kid he was talking to who was
9 saying, oh. I just got a--it was like a G-5. I don't
10 know what the phrase was. But it was something that
11 sounded like it was very technical. And I said, what
12 is that? He said. It's a great camera.

13 He went into the
14 Internet, put the thing in and up popped some sort of
15 Sony Mini Cam that looked like something you would use
16 for the movies. And it was like a \$5,000 dollar
17 camera. I said, how in the heck did this kid get a
18 \$5,000 dollar camera? He said, oh. Somebody paid for
19 it. And he goes back and types in, how did you get the
20 camera? And the kid replied, well, I just turned 18
21 so a lawyer who is on my site incorporated me and, you
22 know, is setting this up as a business.

23 And it's like, so
24 the lawyer was there up- -while it was child
25 pornography. And now that it is legal, he is getting

1 the cameras better and he is taking a piece of the
2 business. And he is make--and I mean this was the
3 stuff of nightmares. This--this--I had not been
4 prepared for this. I had not expected this. You know,
5 I'm a very--I guess a very naive person when it comes
6 to what goes on in the Internet.

7 Q Now when--that day when you go back to Dallas, do you
8 come up with any agreement or plan of action with
9 Justin--

10 A No.

11 Q --and his life or anything of this nature?

12 A Well before I left, there were a few things that
13 happened that resulted in promises. One was the
14 conversations with the men. There was something about
15 it happening in front of somebody else who was
16 horrified, that suddenly--it was almost like he could
17 suddenly see himself. And he was getting more and more
18 upset, until he finally shut off the computer. And the
19 first words out of his mouth when he shut off the
20 computer was, I need a joint. I was like, well you're
21 not getting one.

22 We went out to lunch
23 to a California restaurant--I'm sorry, a Japanese
24 restaurant. And he ordered a California Roll, ate half
25 of it and promptly went to throw up--and went outside

1 to throw up. I went outside with him and, you know, he
2 had been two days off drugs and he looked horrible.
3 And I was worried that I was creating a bad situation.
4 And I called my wife at her office, she's a doctor. I
5 called my wife at her office and I said, I need you to
6 talk to this kid and let me know if I need--if his
7 health is in any danger here.

8 And so she talked to
9 him for a few--and I-- it's light, he's going through
10 withdrawal. She talked to him for a few minutes. The
11 primary thing she wanted to know is what was he
12 addicted to? Because if it was Heroin, there would be
13 a different answer than Cocaine and Marijuana. And
14 he--she got back on the phone with me and she said, you
15 know, he's okay. He's just going to have a very rough
16 time with it. And he is very much going to want to go
17 get more drugs. So I got off the phone with her and we
18 were standing out by my car. And I said, Justin, you
19 have got to stop using drugs. I didn't say it as a
20 command. It's just sort of something someone says.
21 And he said, okay.

22 And it was this odd
23 moment. There was something--I thought he was telling
24 me the truth. And I said, promise me. And he said, I
25 promise. And I said, shake. Let's shake. And I said,

1 Q Do you give him a way to stay in communication with
2 you?

3 A My hope was, given that there were now people--sort of,
4 who have said, we're not going to harm you. We don't
5 want to hurt you. That he could start to--at the very
6 least, protect himself against people who wanted to do
7 things like, you know, drive him in an RV for those
8 horrible things.

9 And so I gave him my
10 cell phone number. I gave him my home number. I told
11 him he could talk to me. He could talk to Theresa. I
12 did not give him Theresa's cell phone because she is a
13 doctor. And, you know, getting a crisis call while
14 she's talking to a patient would not be the greatest
15 thing in the world. But, you know, given the two
16 numbers, I thought, you know, we would be available if
17 he ever needed anything. And that was it. We parted
18 company.

19 Q When is the next time you talked to him after that?
20 Where now you're parting company July 1? When is the
21 next time you hear--

22 A I didn't speak to him until July 5. But something
23 happened on July 3, that is important.

24 Q And what happened on July 3?

1 A On July 3, I was at a party a--my best friend's house,
2 Greg Dumars (ph). And there were a bunch of people
3 there. And this was sort of, you know--it was a very
4 emotional period. And this was--well what have you
5 been doing? I go, well. We've been involved in
6 something really strange. And we start telling the
7 story. And it's the process of telling the story and
8 telling them about what I saw on June 30 and July 1. I
9 mean, you know, it's like, when does it come into my
10 mind this is a news article.

11 I mean, certainly
12 those things are striking me as unbelievable. But it's
13 really the importance of what I had seen is on July 3.
14 As I'm telling this to my friends, I mean we are
15 all--all of us have kids. All of--in fact, everyone at
16 that party had a 13-year- old. At least everyone I
17 knew at that party had a 13- year-old. And, you know,
18 it was, one of these mouths hanging open, you know, a
19 dime could be dropped and everyone could hear it. The
20 world was silent as I was telling this and there was a
21 periodic, oh, my God.

22 And somebody said, I
23 think it was Greg Dumars--said, you have to write this.
24 And I said, yeah. I really do, don't I. But not the
25 Justin Berry story. I have to write about what kids

1 are doing with Webcams. But how in the world do I do
2 that story, you know? It's not exactly something
3 that's easy.

4 Q Now you do hear from him, then, two days later?

5 A On July 5.

6 Q All right.

7 A Can I--can I take a break for a second. Oh, I'm sorry.
8 It's almost--I'll go--I'll keep on going. On July 5,
9 I receive a call at about 9:00 at night on my cell
10 phone, and it's Justin and he's hysterical. I can't
11 even understand him, he is sobbing so much.

12 A It's quite clear he is driving down the road. I ask
13 him how fast he is going? He is going 90. He tells--I
14 ask him if his seatbelt is on. He says, no. I convince
15 him to pull over and come to a stop. I start trying to
16 calm him down and talk to him. And what emerges, he
17 says that, you know, he just--he just punched Greg
18 Mitchell. Now what suddenly occurs to me is Greg--that
19 he is with Greg Mitchell. It is July 5. This is the
20 day that--I'm just going to keep calling it the molest-
21 a-thon, because that is what I always called it.

22 This is the day the
23 molest-a-thon was supposed to start and you punched
24 him. And I'm thinking, good, you know? I said, okay.
25 Where are you? I'm in Bakersfield, which confused me.

1 the New York Times and fly him to Dallas? And Larry
2 said, do it.

3 Q How did you arrange to actually have that done to get
4 him on there--(indiscernible)

5 A No.

6 Q --do you (indiscernible)?

7 A I called Justin back on the highway and said, would you
8 be willing to come to Dallas? And he said, well--and
9 he started (indiscernible). And I said the plane fare
10 will be paid for by the New York Times. I was making
11 it a little (indiscernible) that something was about to
12 go (indiscernible). And he said sure.

13 I called the
14 Emergency Travel Office and it was an odd situation
15 because I was setting up the travel for somebody else
16 for the next day. I forget (indiscernible) didn't
17 work--work the next (indiscernible) and travel
18 (indiscernible) to July 7. And on July 7, Justin got
19 onto a plane in Los Angeles. And sometime after
20 midnight, so it was like the morning of July 8, he
21 arrived in Dallas.

22 Q And you--did you pick him up?

23 A I picked him up at the airport.

24 Q And where do you go from there?

1 A Well, this was a huge problem, because one of the first
2 things that came up was he has left the business. And
3 now this kid has no money. And so the first thing that
4 I did, I said, have you eaten? He says, no. I said,
5 all right. What--why don't I take you to
6 (indiscernible) everything didn't appeal to him. It's
7 like, would you like a sandwich? He would really like
8 a sandwich, so I drove (indiscernible) house.

9 And my wife had
10 actually already made him a sandwich. And this was
11 sort of a (indiscernible) it's such a (indiscernible).
12 (Indiscernible) put the sandwich on a plate on the
13 table, you know, and it was--it wasn't like we threw it
14 there. I mean it was like a mom's sandwich, you know,
15 with chips and a drink. And it was put on the table.
16 And he looked at it and he teared up and said, I can't
17 remember the last time I had a meal at a table. Well
18 he had it at the restaurant, but what he meant was a
19 home, a family table. And he sat down and ate the
20 food.

21 While that was
22 (indiscernible) I asked--I was talking to my wife. We
23 were in the process of moving houses. I had two houses
24 at this point, because we hadn't sold our first one at
25 that time. And we had thought that we could park him in

1 the other house for the night, but it was an empty big
2 house with no electricity. And we were talking about
3 what do we do and, you know, where are we going to put
4 him? And so on and so forth.

5 And you know, again.
6 I couldn't--I didn't feel like I could pay for his
7 hotel. But he also--I knew--it's like, this is--we're
8 now in a situation where this is it. He's got no money
9 comin' in, you know, if he's left his business. And he
10 asked if he could sleep in--on the lounge chair by our
11 pool for the night. And then now it's like 1:30 in the
12 morning. And I was like, wait, you know. You can
13 sleep on the couch. No, he wants to sleep by the pool.
14 And so that's how the evening ended. He went out to go
15 to, you know, we gave him like a sleeping bag, I think.

16 And he went out to go sleep by the pool.

17 THE COURT: Would
18 counsel approach for just a minute?

19 (At 12:05 p.m., bench conference.)

20 THE COURT:
21 Obviously, we aren't going to get done with your
22 witness today. So I was just calling you up here just
23 to find out when you would ever find a convenient place
24 you want to stop in your Direct?

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MR. BAKER:

(Indiscernible) late (indiscernible).

THE COURT: We're

already past. I'm late for a meeting I'm chairing, so I'm willing to do that. But if you need another five, 10 or 15 minutes. But--

MR. BAKER: This is

fine. We're at the pool, this is fine.

MR. HOWARTH: Okay.

THE COURT: Okay,

8:30 tomorrow morning?

(At 12:05 p.m., bench conference concluded.)

THE COURT: Okay.

Mr. Eichenwald, you can go ahead and stand down. We're going to adjourn.

THE WITNESS: Thank

you.

THE COURT: Mm-hmm.

(At 12:05 p.m., witness is excused.)

THE COURT:

Discussing with counsel, this appears to be a convenient time to break. Ladies and gentlemen, as I said, we would go until about noon today because of my docket this afternoon, and a meeting I have to be in right now. Again, I would please ask you, don't

1 discuss the case with anybody. Please don't view any
2 news on the Internet or written about the case, if
3 there is any. We will see you back here tomorrow
4 morning at 8:30 and we will go all day tomorrow. All
5 rise for the jury.

6 (At 12:06 p.m., jury exits Courtroom and
7 proceedings are concluded.)

8 * * * * *

9

1 COUNTY OF WASHTENAW) ss.

2 STATE OF MICHIGAN)

3

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

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15 Dated: March 18, 2007

16 _____

17 Sandra Traskos, CER 7118