

Separating Internet Fantasy From Reality

THE NATION / THE LAW

January 09, 2000 - Charles L. Lindner is a past president of the Los Angeles Criminal Bar Assn

Most crimes have two components, one mental (*mens rea*), the other physical (*actus reus*). A jury must determine what a defendant was thinking when he or she committed a certain act. When the Internet is the medium, that can get complicated. Consider the case of Patrick J. Naughton.

For several months, Naughton, a former executive vice president of Walt Disney Co.'s Go.com, had been "conversing" in an Internet chat room, called "Dad&DaughterSex," with someone who claimed to be a 13-year-old girl. Their conversations were sexually explicit. Ultimately, Naughton and "the girl" agreed to meet. Naughton flew from his home in Seattle to Burbank, then drove to the Santa Monica Pier, where the meeting was to take place.

At the pier, Naughton approached a woman in her 20s. After a brief conversation, FBI agents arrested him. He was charged with traveling across state lines to have sex with a minor and enticing a minor to have sex by using the Internet.

Naughton's attorneys, Donald Marks and Anthony Brooklier, argued to the jury of six men and six women that their client lacked the requisite mental state to commit the crimes he was accused of. Instead, they asserted that Naughton was participating in an Internet sex fantasy and had no real intent to have sex with a minor.

In a surprise decision, the jury could not decide and hung on the two counts. Moreover, the jury divided along gender lines. The men asserted that Naughton was playing out an innocent fantasy, while the women believed that the defendant had gone to the pier with the intent to have sex with a child. Naughton was convicted of possessing child pornography. He will be retried on the attempted child-molestation counts.

In the past, both the FBI and local police have conducted numerous online sting operations to ensnare potential child molesters who use the Internet to find victims. Agents posing as children exchange e-mail or Internet chat messages. Eventually, the suspected child molester proposes a meeting, generally in a mall or other public place. When he shows up at the agreed-upon destination, he's arrested.