

## THREE

“THE HEART OF THE EVIL EMPIRE,” MIKE WHISPERED, AND stepped off the elevator into the luxurious reception area of Salzburg & Prince, the Manhattan megafirm that represented Kidz Play. The clicking of his Cole Haan Oxfords on the Italian marble echoed like the sound of a courtier strutting through a grand palace.

The receptionist hung up the phone and beamed when she noticed Mike. She was already smitten with him since the week he’d spent at Salzburg & Prince examining documents earlier that summer. “Hello, Michael.” She drew out the words and let his name linger on her glossy red lips.

“How’ve you been, Tina?” he asked in a friendly voice.

“Fabulous, thanks for asking,” she said. “They’re waiting for you in the Marshall conference room.”

Mike winked at Tina, then followed the familiar path to the conference room that bore the name and portrait of Justice Thurgood Marshall. Mike wondered if the champion of the down-trodden would turn over in his grave to know that his name was affixed to the conference room of an elitist firm known for representing big, oppressive corporations. He nodded apologetically at the portrait of the late Supreme Court justice and proceeded through the door.

Hayden Kohlberg, the senior Salzburg attorney for Kidz Play, peered over his reading glasses and eyed Mike like a prizefighter watching his opponent enter the ring. He remained seated next to his witness and reflexively puffed out his chest.

“Good-morning,” Mike exclaimed, refusing to feel the slightest hint of intimidation. He slung his box of deposition exhibits onto

the granite conference-room table and extended his hand to the gray-haired witness across from him. "I'm Mike."

"Walter Byars," the Kidz Play engineer announced with a firm, workingman's handshake.

"Hayden, this place must cost your clients a fortune," Mike said, and slipped his business card to the court reporter at the end of the long, rectangular table.

"You get what you pay for," Hayden replied with an attitude to match his Luciano Carreli suit. "Let's get started."

The reporter nodded to the attorneys that she was ready to begin. Mr. Byars swore that he would tell the truth, and after a brief introduction to the deposition process, Mike began his interrogation.

"Please state your name and occupation."

"Walter Byars. My friends call me Walt. I'm the chief design engineer at Kidz Play in Hackensack."

"How many years have you been employed by Kidz Play?"

"Including its predecessors, thirty-seven years." Walter stiffened his posture in pride.

"Wow. That's longer than I've been alive," Mike said, then proceeded to question the witness in depth about his professional and educational background. Mike's genuine amazement and interest in Walter's accomplishments stroked the man's ego all along the way. Mike felt the witness warming up to him, but he still had a long way to go to soften Byars up for the questions that would turn Kidz Play's defense on its head.

Mike took Walter through Kidz Play's process for manufacturing a new toy from conception to design, preparation of a prototype, product development, manufacturing, marketing, and shipment of the final product. The questions were tedious, but Byars appeared to enjoy answering questions about himself and his expertise. Hayden thus frequently "invited" Walter out into the hall, no doubt to review the deposition instructions he'd given the witness. After about three hours of background questions and hallway meetings and a lunch break, Mike finally got to the heart of his questioning.

"Walt, are you familiar with the toy called Samurobot?"

"I designed it," Byars answered with a hint of sarcasm.

"Just answer yes or no," Hayden said.

"Yes," Walter answered and scowled at the company's uptight attorney.

"Great toy. I have one. Love it," Mike said.

"Thanks, Mike." Byars sounded sincere. "You'll love the new robot I'm working on. You can control it with brain waves."

"Brilliant. I can't wait," Mike said, then continued his questions. "Did you submit your Samurobot design for approval to anyone before manufacturing began?"

"I'm the one who approves the designs," the engineer said.

"Answer the question," Hayden instructed.

"No," Walter responded.

"What do you mean, no?" Hayden's face turned red, and he glared at the witness.

"No, I did not submit the design for approval," Byars recited deliberately and gave a curious glance toward the Kidz Play attorney.

Kohlberg tugged at his collar and tried to regain his composure.

"Don't get mad at me," Byars said under his breath. "This is Buck's fault not mine."

"Did you discuss your idea for the Samurobot with anyone before preparing the drawings and prototype?" Mike continued.

"Yes," Walter answered.

"This is irrelevant," Kohlberg said. "Why are you wasting our time with this nonsense?"

"Who was that?" Mike asked, appearing oblivious to Hayden's ranting.

"Buck Baxter, the president of the company."

"What did you discuss with Buck?"

"We had a short meeting in July. I told him about the idea and all the features I thought the toy could have. He was excited and asked me how long it would take to develop a prototype. I estimated I could have something for him in about four weeks. He told me I had three."

"How long did it take you to design and build the prototype?" Mike asked.

“About two-and-a-half weeks working overtime. Buck checked with me every day to gauge my progress.”

Mike already knew about the toy’s design errors that led to the injuries—the use of defective gears that prevented the arms from releasing when encountering resistance and the absence of an automatic shutoff if the gears started to bind. These errors were not found in the prototype but were incorporated into the Samurobot as sold. Mike asked Walter about the design and function of each component, and the engineer eventually acknowledged the errors. The witness explained, however, that these defects were the result of changes made after the initial drawings. His design, the engineer said, was “flawless.”

Walter’s bitterness was transparent as he explained how the president had another senior engineer from the design department secretly revise the schematics. The senior engineer used a simpler gear design for the arms, so they could ship the product in time for the holidays. “If they’d consulted me,” Walter testified, “they would’ve known that the alternative gear design would prevent the arms from releasing when encountering resistance.”

The senior engineer reported directly to the president, and Baxter himself approved the design changes. By the time Walter found out about the modifications, the company had already shipped three million units. Stopping production at that point would have cost Kidz Play millions and potentially ruined the company.

The sales figures told the rest of the story. Kidz Play released the Samurobot in late October. In an extraordinary feat of production, the company shipped two million units before Thanksgiving and a total of over four million by the end of the year. Kidz Play grossed more than \$600 million. By January, the company’s stock went from \$1.50 to over \$27 per share.

Walter’s face sagged with remorse that he had not tried to prevent Kidz Play from shipping the redesigned Samurobot. Mike thought, however, that the anguish in his aged face might instead have come from his failure to profit from the success of his invention while Buck and the other stockholders became obscenely wealthy.

“You must be pretty mad at Kidz Play because the company got rich from your invention?” Mike looked directly at Hayden with a goading smile.

“I understand that ownership of my inventions was part of the deal,” Walter said.

“When did the senior engineer discover that his design changes made the toy defective?”

“Objection, calls for speculation.” The veins in Hayden’s neck bulged.

Walter answered despite Kohlberg’s objection. “I told him, but I don’t recall when it was. We had a heated argument when I found out he’d changed the design without my knowledge.”

“Good time to take a break from this trifle,” Hayden interrupted again to disrupt the flow of Mike’s examination.

“I’m almost finished,” Mike said.

But Hayden was already on his feet and pulling Walter out of his chair.

After an extended break, Penny Wigand, the fair-haired Salzburg associate who had monitored Mike during the summer document review, came to apologize for the delay. Mike and Penny recalled some of the laughs they’d had together during the tedious document analysis and made small talk about the case. Penny instantly clammed up when Hayden marched back into the conference room alone, carrying a single sheet of paper, and took his seat across from Mike.

Hayden leaned onto the granite table and cleared his throat. “We both know that you’re just trying to extort cash from Kidz Play. If it were up to me I’d grind you into the ground at trial. But I’ll admit it’s not cheap hiring my firm for a case like this—like smashing a gnat with a sledgehammer—and the company thinks it will save money by paying you to go away.

“Never mind the injured kids as long as settling helps Buck’s bottom line,” Mike said.

“Against my advice,” Hayden continued, “Kidz Play is prepared to offer an obscene amount to resolve this lawsuit now.”

The attorney slid the paper across the conference table.

Mike scrunched his face and said, “Why don’t you just tell me what the offer is?”

Hayden, trying not to break his game face, responded, “We think you’ll be pleased with the number and want it to be in writing.”

Mike shrugged his shoulders and grabbed the paper. In handwritten notations on the page was printed “\$360,000.” The note explained further that the payment would be “\$60,000 per plaintiff paid in an annuity over ten years.” That figure would be sufficient to cover BW’s litigation costs with a modest fee and would probably please Warren enough to clinch the partnership election, which made Mike’s heart race. But the offer would not leave much for his injured clients, and his gut told him Kidz Play would pay ten times that amount after the deposition was finished. His gut prevailed.

“Wow that’s *very* generous,” Mike said.

Hayden did not flinch at Mike’s flippant response.

“I envision an angry jury adding at least another zero to the end of this number,” Mike pointed to the paper, “and maybe more after we hear the testimony of Buck and his accomplice. Let’s finish the deposition, and we can talk about settlement tomorrow.” Mike glanced at his watch.

Penny suppressed a knowing smile.

Hayden signaled to her with a stern nod, and she escorted the witness back into the room. Byars took his usual seat, and Penny sat on the other side of Hayden, a cheap tactic to distract Mike with her flowing blonde hair and low-cut blouse.

Mike reached into his box of exhibits and removed a manila file folder. He took the top sheet, handed it to the reporter, and asked her to mark it as “Byars Exhibit 33.” He distributed copies of the same document to Hayden and Walter and asked the engineer to review it. The color drained from Hayden’s face, and his eyes grew wide. Byars breathed heavily and mumbled aloud as he carefully studied the words. Mike sat motionless, his arms folded across his chest, staring coolly at Kohlberg.

Hayden sat shamefaced, like a philandering husband holding an unexplained hotel receipt. After a few moments, Byars looked up, seething, and indicated that he’d finished reading the document.

“For the record,” Mike began, “Exhibit 33 is a memorandum from the Product Development Department to Buck Baxter dated October 15, last year, subject Samurobot Product Summary. The memorandum is labeled ‘confidential’ at the top. How lucky for me that Kidz Play decided to staple it within the pages of its SEC filing.”

Hayden jerked his pale face up and shifted his eyes.

“Have you ever seen this document before?” Mike asked.

“No, I have not.” Walter spoke deliberately.

“Will you please read the second paragraph for the record?”

The witness complied:

We can expect a high incidence of injury (1 injury per 2000 toys sold) from the ratchet action on the toy’s arms. Preliminary tests show that a customer holding the figure around the abdomen while the arm sockets are rotating could get his fingers stuck and possibly lacerated.

“The scoundrels *knew* how many children would be hurt,” Walter volunteered angrily.

“Wait for a question,” Hayden reminded in a subdued voice.

“Did anyone at Kidz Play ever tell you that the company knew the ratchet mechanism in the arms could, or rather, *would* cause injury?” Mike asked.

“When I confronted the engineer about his design changes,” Byars said, “he didn’t appear surprised when I told him that his design was problematic.”

“Did you confront him before or after October 15, the date of the memorandum?”

“I’m sure it was after, given his attitude toward me and the escalating sales.”

“Will you please read the first sentence in the third paragraph?”

Byars continued reading aloud:

Changing the design and manufacturing process to provide a release mechanism would delay production

by at least three weeks—projected ship date November 15.

“Did Kidz Play have time to correct the design and still fulfill its orders in time for the holiday sales?” Mike asked.

“Calls for speculation,” Hayden interjected.

“Most of them,” Walter answered despite the objection.

At Mike’s direction, the engineer then read aloud the paragraph identified as “marketing analysis”:

Advertising the product as a handheld toy may increase the number and severity of injuries. A warning label could be placed on the printed advertising and on the toy to minimize improper use.

“Now, let me show you a color photocopy of a print advertisement for the Samurobot that was produced by Kidz Play in discovery.” Mike handed copies to Kohlberg and the witness and asked the reporter to mark a copy as “Byars Exhibit 34.” “Do you recognize this document?” he asked.

Byars studied the picture of two young boys holding the robots and simulating fighting. He shook his head and said, “It’s an ad for the Samurobot.”

“Were these ads run nationwide?”

“I believe so.”

“Do they contain the suggested warning?” Mike asked.

Byars reread the memo, looked at the ad, and said, “There’s no warning.”

“The caption below the two kids says, ‘More Realistic Combat!’” Mike observed. “Did you design the Samurobot to be held?”

“Yes,” Byars answered with disdain. “My design was appropriate for a handheld figure.”

Mike instructed the reporter to go off the record and asked Hayden in a hushed voice, “If Kidz Play knew the Samurobot would cause injuries, shipped the product anyway, and even advertised the toy for use in a manner that would cause serious harm, I wonder if the injuries were fortuitous?”

“Why would that be important?” Byars asked and cocked his head.

Hayden froze like a possum in headlights. He understood. He knew that if the plaintiffs proved that the injuries were not accidental, Kidz Play’s insurance policy might not cover the claim.

“That’s all the questions I have,” Mike said. “Thanks for your time, Walt.”

They went back on the record and formally concluded the deposition. Penny escorted Mr. Byars and the court reporter to the lobby. Hayden shifted papers around nervously while he waited for the others to be out of hearing range. “You know, Mike, I’m sure you’re spending more on this case than your firm expected.” His demeanor grew confident as he heard himself speak. “I think I can talk to Baxter and come up with an offer you can’t walk away from.”

“Don’t horse around with me, Hayden,” Mike said. “We both know what happened here today.” He suppressed a self-satisfied smile. “Don’t even talk settlement with me unless you come up with at least a mid seven-figure number and agree to recall the Samurobot.” Immediately after the words left his mouth, Mike hoped that he had not overplayed his hand and jeopardized a settlement he desperately needed to secure his election to the BW partnership. He picked up his box and headed for the door.

“Hi, *Michael*,” Tina said when he entered the reception area.

“Tina, would you do me a big favor?”

“*Anything* for you, honey,” she eagerly responded.

“Would you call my wife and tell her I’ll be on the 7:10 shuttle then catch a cab home?”

“Oh.” She blew out a pouty breath.

Mike gave her a note with his home phone number. Tina ran a manicured finger over the back of his athletic hand and snatched the paper.

“Thanks, Tina. See you soon.”

“Good-night, *Michael*,” she said with a bittersweet grin.

Mike smiled and hurried to catch a departing elevator. As the doors closed, Penny walked past the diminishing opening and shot him a furtive wink. Mike smiled and burst out laughing. He could

hear her begin to chuckle too as the car started its descent. *It was Penny who slipped the memo into the SEC filing rather than "lose it" as Hayden no doubt instructed.*

As Mike waded through security at JFK Airport with a crowd of angry New Yorkers, he dialed Craig on his cell phone to tell him the good news.

"What's up?" Craig answered.

"I just finished the deposition of the chief engineer," Mike said. "Byars admitted the company changed his design and intentionally shipped a dangerous toy."

"Sweet!" Craig exclaimed. "I smell victory."

"By the way," Mike switched the phone to his other ear. "Have you been kissing my wife?"

"In her dreams," Craig said.

"Actually, in my dreams," Mike said.

An elderly woman shot a suspicious glance at Mike.

"Huh?" Craig said.

"I had another weird dream last night," Mike continued in a hushed voice. "I was having a huge party in my yard, and you were at the back of the crowd making out with Helen."

"Did you try to strangle her again?" Craig asked.

"No, but I wanted to strangle you."

"It wasn't me. She's not my type."

"Every woman is your type," Mike said. "Oh, you mean *single*."

"You can't think she's cheating on you?" Craig asked.

"No, that's impossible. I just think I've been under too much pressure lately. And it's getting harder to tell the difference between dreams and reality. Be sure to send me the name of your shrink girlfriend."

"Will do," Craig said. "Have a safe flight."

"Thanks, brother."

Mike made it through security just twenty-five minutes before his departure time. He raced with his load through the United concourse and sprinted to the gate. He leaned at the finish line, beading perspiration and panting heavily, just as the uniformed attendant was closing the door to the jetway.

“No!” Mike pleaded between deep breaths. “I’m here.”

A shapely young blonde spun around with her company face on, prepared to turn him away.

Mike pushed his crumpled ticket into the woman’s hand, flashed his most debonair smile, concealed his ring finger under the box, and glanced at her nametag. “Come on, Allison. As tempting as it would be to spend the evening in New York, perhaps in the company of an attractive young woman, there still has to be time for me to board that plane.”

Allison blushed and flipped her hair. “Maybe we could make some kind of arrangement.” A coquettish smile formed on her mouth, and she caressed Mike’s forearm.

Mike leaned his face close to her. “Why don’t you take my ticket, and perhaps we’ll get together the next time I’m in New York.”

Allison simpered, smoothed the creases in his ticket, and studied the print. “Well Mr. . . . Kingston, we might just run into each other sometime at . . . Dulles Airport.” She pulled the heavy gate door open and tossed her hair back again. “Better hurry,” she said.

Mike grinned and mouthed, “Thank you,” as he hustled past her, down the ramp, and onto the small plane.

Mike saw Helen and Victoria waiting just outside of security at Dulles.

“Daddy, Daddy, Daddy,” Victoria shouted.

Mike dropped his box, scooped his daughter into his arms, and held her close to his chest. “My little girl is growing up so fast,” he said to his wife. “I’m surprised she even recognizes me after I’ve spent so much time at the office lately.” Mike felt despondent but perked up when he remembered there was a light at the end of the tunnel. “I think I’ll be able to settle the toy case soon, and partnership decisions are tomorrow, so hopefully the pressure will lighten up.”

“Really?” Helen asked with a voice that revealed she’d heard that story before but nevertheless retained a breath of hope.

“I thought I was going to take a cab home from the airport,” Mike said.

“After I got a call from that cute young receptionist, I had to make sure you were traveling alone. Besides, I couldn’t wait to tell you that Victoria learned a new phrase tonight.”

“Shut up,” Victoria responded on command and clapped her tiny hands together.

Mike chuckled. “Where did you learn that from?”

“Uncle Craig,” Victoria announced.

*Why didn’t Craig tell me he was at the house tonight?* Mike wondered to himself. “Speaking of Craig,” he said, “I had another crazy dream last night.”