

sex crimes

How to Utilize Forensic Psychological Evaluations Within Internet Online Solicitation and Pornography Sex Crime Cases

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The purpose of this article is to present how forensic psychological evaluations can be effectively utilized within internet/online solicitation (importuning) and pornography possession criminal litigation. The author describes characteristics of offenders who have been charged with online solicitation and defendants who have been charged with possession of illegal child pornography. These offenders will be differentiated from other typologies of hands-on contact sex offenders in regards to characteristics and sexual re-offending risk. The author highlights diagnostic classification, risk assessment, and treatment issues for online solicitors and pornography possessors.

Importantly, a thorough and context-specific, forensic psychological evaluation in a pornography sex crime case is critical to the development of litigation as there may be too much focus on sophisticated and complex computer evidence such as expert authenticity of images. The criminal defense attorney may educate the jury or judge of her client's potential low risk of sexual recidivism, amenability to treatment, and the causes of the illegal behavior that might have their roots in psychiatric impairments that are responsive to intervention.

to catch a predator

Recently there has been initiation of widespread sex offender legislation throughout the United States gearing towards harsher penalties, longer mandatory minimum sentences for sex crimes, lifetime supervision of sex offenders by global positioning satellite after they are released from prison, and indefinite civil commitment of these offenders after their prison term expires. Such laws include the Adam Walsh Child Protection and Safety Act¹ and the Jessica Lunsford Act.²

These laws have been the topic of a media frenzy urged by television shows such as Dateline's "To Catch a Predator" and investigators Bill O'Reilly and Hannity and Combs. While the statutes appear to aim towards protecting society from high risk sex offenders, the public is led to believe that all sex offenders are dangerous "predators." In fact, the term "predator" is a misnomer because if that term is used, it should define an offender who has a history of sexual crimes and who is likely to commit them in the future. Many of these "online" offenders are non-contact offenders, who either possess pornography and/or are caught attempting to set up a meeting with an underage person. These offenders are more likely than not to be low risk sex offenders who do not have a history of sex offending.

nature of law enforcement investigations

Each year, one in five youth encounter online solicitations that are sexual in nature via chat-rooms or instant messaging routes. The National Juvenile online Victimization Survey has studied law enforcement investigations of internet sex crimes against minors. They have found that 25 percent of all arrests for internet sex crimes against minors were due to "proactive" investigations where police pose online as minors or pretend to be mothers teaching their children about sex.³ These investigations allow law enforcement to catch suspects before they have an opportunity to offend. Undercover investigations can be referred to as "reactive" or "take over" when police learn of a solicitation and they then pose as the

original minor and target the suspect.

In the year 2000, one quarter (644) of the internet sex crimes against juveniles (about 2,500 total arrests) were based on proactive investigation. Other arrests were for crimes committed by the offenders who met the juveniles online (20 percent), other sex crimes committed against juveniles by family members or acquaintances against juvenile victims (19 percent), and the possession, distribution, or trading of pornography on the Internet (36 percent of arrests).

typologies of sex offenders

Sex offenders are a heterogeneous group. There are several distinctions or classes of sex offenders including but not limited to:

1. Rapists
2. Child molesters
3. Hebephiles (sex offenders perpetrating post-pubescent females, 14-17 years of age)
4. Crossover sexual offenders- individuals whose victims are from multiple age, gender, and relationship categories
5. Sex offenders who have engaged in hands on sex offending and pornography possession
6. Non-contact sex offenders including voyeurs (peeping type offenders and exhibitionists)
7. On-contact pornography possession offenders and Internet solicitation (importuning) offenders.

For purposes of this article, we will focus on group 7, offenders who have been charged with pornography possession and/or importuning type crimes (the latter including offenders who solicit and attempt to meet an underage child from internet contact — either a real child or an undercover officer posing as a child). Not infrequently, these importuning offenders also have possession of illegal pornography when investigated by law enforcement. Ordinarily, these non-contact offenders are lower risk offenders because they are older in age, well-educated, married, have no history of sex offenses (including hands-on sex offenses), lack diagnoses of paraphilias (sexual deviancy), and are amenable to sex offender treatment.

diagnosis

In order to differentiate diagnostic possibilities, an attorney must seek the assistance of an expert witness who has an extensive background evaluating sex offenders within a forensic/legal context. A diagnosis is associated with the derivation of sexual offending, risk assessment, and directions in treatment. Hands-on sex offenders, usually rapists and child molesters, have unique characteristics. Often these

rapists possess antisocial personality disorders and have histories of both nonsexual and sexually violent acts. Their criminal personality and sexual deviance elevate their risk level.⁴ Child molesters (often qualifying for a diagnosis of pedophilia) have strong deviant sexual desires towards children and commonly commit hands on sex offenses against children under 13. They are more likely to possess pornography and utilize it in their offending behaviors.

Pornography and importuning offenders are often a different “breed” of sex offender. These offenders often do not have a prior sex offense history. They rarely possess an antisocial personality disorder and frequently do not qualify for pedophilia. They may possess symptoms that fall under the rubric of the following categories:

1. Paraphilias (sexual deviancy disorders, i.e., pedophilia)
2. Hypersexual disorders
3. Obsessive compulsive disorders/impulse control disorders
4. Online sexual problems/addictions
5. Other psychiatric disorders, such as depression, that include features of emotional loneliness and isolation or that stem from environmental issues such as a broken marriage and/or loss of employment. They may cope with these problems through inappropriate sexual activity.

The most relevant paraphilic disorder concerning pornography offenders and importuners would be pedophilia. One must experience recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children, generally age 13 years or younger.

All too often, a defendant is contacted by a law enforcement officer who impersonates a 12 year old girl. The age of 12 is usually used to fulfill two purposes: (1) to establish an age relevant to pedophilia, and also, (2) to satisfy harsher penalties under sex offender laws. When considering this diagnosis, an expert should view all pornographic images to consider the ages of the children/adolescents as many of these pictures will be of teens older than age 13. The expert must determine if the individual was viewing pornography for six months or longer. One can technically be diagnosed with pedophilia by viewing child pornography (and not actually engaging in hands-on offending of youth). Such use must cause them impairment in social, occupational, or other areas of functioning.

Conversely, hypersexual disorders include a disturbance of more conventional sexual functioning such as masturbating or the use of pornography and at some point the use is compulsive and/or excessive and causes the person distress.

Hypersexual disorders may also include cybersex (Internet related activities geared for sexual arousal and attracting others online). Importantly for pornography and importuning sex offenders, many of these individuals will teeter between sexual behavior that is socially acceptable and not abnormal, and behavior that becomes pathological when the person suffers distress or impairment in functioning.

Paraphilias and hypersexual disorders have also been considered to fall under the psychiatric genre of obsessive-compulsive disorders and impulse control disorders.⁵ The obsession may be the intrusive thoughts about pornography and the compulsion may be the repetitive masturbation to the images and the use of the computer. These behaviors are hallmarked by their impulsive nature and likely represent addictions that are motivated by intense drive states.⁶

internet addiction and emotional avoidance

Many offenders who have possessed pornography on their computers and engaged in cyber-chat with underage females use the Internet to avoid negative emotional states, such as depression, anxiety, anger, boredom and loneliness.⁷ This is a critical point because these offenders may not be sexually deviant, rather they use sex as an outlet to deal with these emotional deficits.

The Internet serves as a device to access sexual material which ultimately assists in relieving one’s sexual arousal and alleviating emotional distress and dissatisfaction in one’s life. The Internet offers sex offenders an avenue to download pornography and masturbate to images, which is in effect a rewarding and reinforcing process leading to further avoidance of dealing with one’s problems and human relationships.⁸ This Internet behavior has an addictive quality with the subconscious process of avoiding negative emotional states.

Internet addiction includes an individual who has obsessive thoughts about the Internet and has volitional problems controlling Internet use leading to excessive amounts of time online and failure to meet the demands of their everyday life. They will likely experience negative emotional states when offline and increasing tolerance to the effects of being online while denying problematic behaviors in their lives. When online, they will have more positive feelings about themselves. This Internet addiction includes a behavioral sequence that has a rewarding and reinforcing quality that mimics an impulse control disorder such as kleptomania. The images that stimulate sexual arousal, the anonymity

with the computer use including anonymous chat rooms and typing on the computer, may play a role in making the Internet reinforcing.

An important feature, the anonymity of the computer use which includes having relationships with others, is critical to many of these offenders, perhaps especially the importuners. Importuning type offenders often lack relationships or are involved in dissatisfied and conflictual relationships/marriages and the chat rooms allow an outlet to have connections with others. This connection with others which may be legal (exposing oneself through webcams to other consenting adults) may be reinforcing and have an addictive quality. The adult male who searches for consenting women to view his “show” may have a difficult time finding these women online. He may be afraid that the individuals he is exposing himself to are in fact homosexual men posing as women. His exposing activities which may not qualify for exhibitionism (because the viewers are not “unsuspecting strangers”) may be reinforcing to him when he does find viewers he deems appropriate. However, given his emotional deficits and need for anonymous connection, this type of offender is often vulnerable to an instant sex connection with an online law enforcement agent who he thinks is an adolescent female.

Importantly, one may question the differentiation of the behavioral reinforcement of the Internet use versus the function of the pornographic material itself.⁹ Both resources serve the same purposes of obtaining reinforcing stimulation and avoiding negative mood and emotional states. The Internet functions as an anonymous device to access both connections with others via chat rooms as well as a resource to obtain pornographic images to masturbate to. Each behavioral sequence on the Internet serves as a motivation resulting in sexual arousal and orgasm which are pleasurable and intrinsically rewarding.

Pornography offenders are unlike contact “hands on” sex offenders as the access to the Internet is available and immediate, controlled and anonymous. The predator who society fears is the individual who stalks children and abducts them on playgrounds eventually sexually assaulting them, often in a heinous fashion. Indeed, most pornography offenders do not use pornography as a vehicle to stimulate themselves to engage in a contact sex offense.

profiling the online offender

A recent study by Mitchell, Wolak & Finkelhor (2005) investigated the characteristics of offenders who were

investigated during proactive police investigations in which the suspects were soliciting youth online. The National Juvenile Online Victimization Study has been a resource for the collection of data relevant to the number and characteristics of arrests for Internet sex crimes against children. The authors found that these offenders are almost always male, 61 percent between the ages of 26 and 39, 33 percent were 40 years of age or older. Over 90 percent of the offenders were Caucasian who had relatively stable incomes and were employed at the time of arrest. About 38 percent were high school graduates and 44 percent had some college experience. About 60 percent of them lived either in suburbs, rural areas, or small towns, and 34 percent were single and never married, 35 percent were married, and 19 percent were divorced. Some of this data flies in the face of the data we know about high risk sex offenders who often have a history of younger age, lower education, unemployment, and single marital status.

About 13 percent of the offenders arrested in undercover operations had committed crimes involving online identified victims. Those offenders who had online targets and were part of an undercover investigation were more likely to be older, have higher incomes, be employed full-time, and have lived with minors as parents or relatives at the time of their crimes than those offenders of juvenile victims. Online target offenders had fewer prior arrests for non-sexual offenses and for sexual offenses against minors and had engaged in less frequent sexually deviant behaviors than those offenders who actually had juvenile victims they solicited online. Both groups had about the same rate of child pornography possession (40 percent).

risk assessment

Risk assessment for the Internet solicitor and pornography possession non-contact offender groups is a different “animal” from that of the rapist or child molester (chronic hands on offender groups). Some of the same risk factors apply to both groups; however, the former group often has dynamic and changeable risk factors are amenable to intervention without the history of static and unchangeable factors that are immune to treatment. Along the lines of static risk factors, the popular actuarial risk assessment instruments such as the STATIC-99 are not appropriate to utilize with the hands-off sex offenders as the normative samples the instrument’s data are based on are typically hands on sex offenders (rapists and child molesters).

Importantly, pornography plays a minor role in the

commission of most contact sex offenders' offenses; however, when it is involved, it is usually utilized by sexually deviant child molesters with extensive sex offending histories.¹⁰ Critically, child pornography offenders usually do not have a history of contact offending. Those with prior criminal records for any type of offenses are significantly more likely to reoffend criminally and sexually than those without a criminal record. Child pornography offenders who have committed a prior or concurrent contact sexual offense are a higher risk group to sexually recidivate.¹¹

treatment and risk management issues

Many pornography offenders have never volunteered for treatment and do not have insight into the nature and severity of their problems until they are arrested in an undercover sting operation causing them humiliation, divorce, separation from family, and job loss. Pornography offenders and importuners are usually a treatable group.

Importantly, treating the sexual issues is only one piece of the puzzle. Many offenders' illegal acts are due to a variety of biopsychosocial factors including environmental stress such as marital relations, job dissatisfaction, emotional isolation, lack of social support, anger/hostility issues, alcohol use, and poor coping skills. These non-sexual elements need to be a focus of intervention.

Treatment should likely entail four modalities:

1. Group sex offender treatment (relapse prevention/cognitive behavioral modality)
2. Individual therapy to deal with issues such as depression, self-esteem, anger, relationship instability, and divorce. Marital therapy should also be considered
3. Psychotropic medication, focusing on monoamine (norepinephrine, dopamine, and serotonin) metabolism. Medication may include serotonin reuptake inhibitors which modulate serotonin and decrease deviant sexual behavior, impulsivity, and sexual appetite.

Lower risk sex offenders are more amenable to community supervision and treatment. They will also display lower recidivism rates than the traditional high risk rapists and child molesters.

key points

1. The Forensic Psychologist Expert Must Attempt to View the Pornography and/or Online Solicitation (emails and instant messages)

Critically to these cases, the expert must attempt to view the pornography to assess the stimuli that arouses the defendant. This again is important to establish sexual deviance disorders and is relevant to risk assessment. This may be a problem as the attorneys defending these cases nationally are struggling to obtain this data in discovery due to the laws making it illegal for them and their expert witnesses to possess it as part of their investigations. If allowed to review this data, the forensic psychologist expert should foster a relationship with the computer forensic expert to become educated on what kind and how much pornography the defendant was viewing. For example, the expert witness should observe the log times and be aware of the amount of hard drive space on the computer because it reflects the storage capacity. The person may have stored pornography on a USB hard drive, Thumb drive or Zip drive to increase storage capacity. The Web Browser History, Cookies, and Temporary Internet Files should be accessed to assess the defendant's patterns of computer usage. Bookmarks such as the North American Man-Boy Love Association (NAMBLA), the Lewis Carroll Collector's Guild or other similar sites advocating sex with minors may provide information to the expert on the defendant's interests. Chat room activity and emails should also be reviewed.

2. The Expert Should Be Aware of the Research Relevant to Pornography and its Equivocal Association to Sexual Reoffending

There is little empirical evidence suggesting a direct causal link between pornography viewing and sex offending. Pornography use can be neither a necessary nor sufficient cause of sexual offending because sexual offenses are usually committed by those offenders with little or no exposure to pornography.¹² The role of pornography in sexual offenses requires additional triggering factors as well as predispositional and situational factors relevant to the onset of offending. In fact, sex offenders self-report less frequent use of pornography than groups of non-sex offenders. Sex offenders also are not prone to use offense related and non-conventional pornography than non-offenders. Exposure to child pornography is likely an influential factor but not the sole element in the development of sex offending. Notably, for preferential child molesters, pornography aids pedophiles

in satisfying and satiating their compulsive and persistent sexual fantasies about children. Again, these offenders are a typology different from the “hands off” pornography and importuning type offender.

3. The Expert Witness Must Have a History of Working with Various Types of Sex Offenders and a Strong Knowledge Base Relevant to Risk Assessment

It is recommended that the attorney representing pornography possessing offenders and importuners be aware of their client’s typology as a sex offender. This class of offender is much different from the traditional contact sex offending rapist and child molester. The representation of their client necessitates working within a multidisciplinary team of experts. This process must be a cohesive one with various experts relying on each other to not only authenticate the evidence but to understand the mindset of the defendant, the etiology of his offending patterns, and the steps to rehabilitation. The forensic psychologist must know when to and when not to apply actuarial risk assessment instruments. Dynamic and changeable risk factors must be intensely investigated and made a target for intervention.

4. The Expert and Attorney Must Intensely Question the Importuner About the Details of His Online Solicitation and Motives Relevant to Meeting a Juvenile Victim

Most online solicitors do not have a history of hands-on sexual offenses. The expert witness must analyze the defendant’s Internet communication with the online targets and juvenile victims and compare this dialogue with any prior sex offense behaviors.

concluding remarks

When considering a forensic psychological evaluation in online solicitation and pornography possession cases, the expert witness must attempt to view the pornography and/or online solicitation (emails and instant messages, etc.) The expert should establish a relationship with the computer forensic expert and also encourage the attorney to make motions to obtain access and viewing privileges of the pornography and similar discovery. The expert should also be aware of the research relevant to pornography and its equivocal association to sexual reoffending. The forensic mental health professional must apply the individual characteristics of the defendant’s history and offending behaviors to the empirical data relevant to diagnostic and risk assessment issues.

endnotes

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