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Assessment of Risk in Internet Child Pornography Cases

by Philip H. Witt, Ph.D.

Recently, I was in federal court for a sentencing hearing in an Internet child pornography possession case. The defense attorney argued eloquently that the defendant had dramatically turned his life around over the past few years, entering treatment before he was arrested and throwing himself into activities related to his rehabilitation, such as 12-step sexual addiction groups. The U.S. attorney then argued equally articulately that the defendant's historical pattern of Internet pornography use indicated he was a pedophile, and that he had spent considerable sums of money on accumulating a vast collection of child pornography, much focusing on prepubescent girls. The case presented the court with a difficult assessment question: How much risk of future sex offending (Internet-related or otherwise) did this man present? There is much debate on this issue, with the general public assuming that the risk of future sex offending is high.

Not only has the Internet become more ubiquitous in daily life, but the accessibility of illegal or deviant sexual material that was previously more difficult to obtain has allowed individuals to explore a wide range of erotica. Cooper, Delmonico, and Burg have suggested that the three A's" (accessibility, affordability, and anonymity) fuel Internet pornography use, with regard to both adult

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pornography and child pornography. (Coo-per Delmonico, and Burg, "Cybersex Users, Abusers, and Compulsives: New Findings and Implications," 7 J. of Sexual Addiction & Compulsivity 5-27 (2000).) Other authorities, including Quayle, Vaughn, and Taylor, note that individuals who wish to view illegal pornography can remain completely anonymous, having no need to personally contact a dealer. (Quayle, Vaughn, and Taylor, "Sex Offenders, Internet Child Abuse Images, and Emotional Avoidance: The Importance of Values," 11 Aggression & Violent Behav. 1-11 (2006).) That such anonymity may be illusory is something that child pornography users discover only later.

Admittedly, the literature regarding Internet child pornography consumers is not well developed, certainly not nearly as well developed as the literature for contact sex offenders. The reason is straightforward: Internet-related sex offenses have become common only in recent years, since the Internet has become widely used. Consequently, as recently as a decade ago, there were few Internet-related sex offenders to study. Prospective recidivism studies could not be conducted until recently, when a population of Internet child pornography offenders existed to be followed forward in time.

The question of most interest is: Are child pornography users similar to contact sex offenders? If so, then much of what the field has learned regarding contact sex offenders could be applied to child pornography users.

Empirical Literature

Even now, relatively few studies exist regarding recidivism of Internet child pornography offenders (throughout this article, the term "child pornography offenders" will be used to describe those individuals who possess child pornography, not those who create or produce it). Some studies have examined the percentage of contact sex offenders who have used child pornography. The evidence from these studies has been conflicting. For example, Kingston et al. (2008) found use of child pornography to be a significant risk factor among their sample of contact sex offenders; that is, those who had consumed child pornography were at higher risk for reoffense. (Kingston, Fedoroff, Firestone, Curry, and Bradford, "Pornography Use and Sexual Aggression: The Impact of Frequency and Type of Pornography Use on Recidivism Among Sexual Offenders," 34 Aggressive Behav 341-51 (2008).) Others, for example

Howitt, did not find such an association between use of child pornography and reoffense among contact sex offenders. (Howitt, "Pornography and the Paedophile: Is It Criminogenic?," 68 Brit. J. of Med. Psychol. 15-27 (1995).)

Variable Lacks High Positive Predictive Power. Even if the literature in this area consistently indicated that contact sex offenders frequently use child pornography, one cannot draw the inference that the reverse is true—that is, that child pornography offenders frequently perform contact sex offenses as well. The fact that a variable has high sensitivity in a population (i.e., a high percentage of contact offenders use child pornography) does not mean that that same variable has high positive predictive power (i.e., that a high percentage of child pornography users commit contact sex offenses). By way of obvious analogy, simply because almost all judges were previously lawyers does not mean that all lawyers will later become judges.

Contact Sex Offense History. Other studies have examined the percentage of child pornography offenders who have contact sex offenses in their histories. This is an area of some controversy, and the literature is conflicting on this topic. For example, two widely cited studies within the U.S. federal prison system found that over the course of treatment, a substantial percentage—as high as 85%—of men incarcerated for child pornography offenses acknowledged an unreported prior history of contact sex offenses. (A.E. Hernandez, "Self-Reported Contact Sex Offenses by Participants in the Federal Bureau of Prisons' Sex Offender Treatment Program: Implications for Internet Sex Offenders," poster session presented at the 19th Annual Research and Treatment Conference of the Ass'n for the Treatment of Sexual Abusers, San Diego, CA (2000); M.L. Bourke and A.E. Hernandez, "The 'Butter Redux': A Report of the Incidence of Hands-On Victimization by Child Pornography Offenders," 24 J. of Fam. Violence 183-91 (2009).) This finding prompted Bourke and Hernandez to state:

Our findings suggest that online criminal investigations, while targeting so-called "Internet sex offenders," likely have resulted in the apprehension of concomitant child molesters. (Bourke and Hernandez, *supra*, at 189.)

Pornography Consumption Not Risk

Factor. Other studies, such that by as Wolak, Finklehor, and Mitchell, found that roughly 10% of child pornography offenders had a prior arrest for a contact sex offense. (Wolak,

Finklehor, and Mitchell, "Child Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study," Nat'l Center for Missing & Exploited Children (2005); available at <http://www.UNH.edu/ccrc/pdf/jvq/CV81.pdf>.) One study, in fact, found that no child pornography offenders in their sample had a criminal record of any kind, sexual or otherwise. (A. Frei, N. Erenay, V. Dittman, and M. Graf, "Paedophilia on the Internet: A Study of 33 Convicted Offenders in the Canton of Lucerne," 135 Swiss Med. Wkly. 488-94 (2005).) These and similar studies have prompted Endrass et al. (2009) to state the opposite conclusion as Bourke and Hernandez:

The consumption of child pornography alone does not seem to represent a risk factor for committing hands-on sex offenses in the present sample—at least not in those subjects without prior convictions for hands-on sex offenses. (Endrass, Urbanik, Hammenmeister, Benz, Elbert, Laubacher, and Rossegger, "The Consumption of Internet Child Pornography and Violent and Sex Offending," 9 BMC Psychiatry 49 (2009); available at <http://www.biomedcentral.com/content/pdf/1471-244X-9-43.pdf>.)

Time will tell whether the use of self-reports of incarcerated treatment cases yields an overestimate or use of arrest records yields an underestimate of true offending base rates. However, this situation is not so different from other known reporting discrepancies for sex offenders. Over two decades ago, Abel et al. (1987) found that many sex offenders in outpatient treatment reported far more victims than those for which they had been convicted. (Abel, Becker, Cunningham-Rathner, Mittleman, and Rouleau, "Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs," 2 J. of Interpersonal Violence 3-25 (1987).) Yet, contact sex offenders recidivism remains the gold standard, among as measured by new arrests or convictions.

Comparison of Personal Charac-

teristics. Some studies have compared the personal characteristics of child pornography offenders to those of contact sex offenders. Studies have found that child pornography offenders are generally more educated, more intelligent, and have more stable work and relationship histories than contact sex offenders. (See A. Burke, S. Sowerbutts, S. Blundell, and M. Sherry,

"Child Pornography and the Internet: Policing and Treatment Issues," 9 *Psychiatry, Psych., & L.* 79–84 (2001).) Endrass et al. (2009) found that a majority of their sample held jobs requiring extensive education and training. Although both child pornography offenders and contact offenders possess various cognitive distortions, the content of these cognitive distortions differs for each group. Child pornography offenders believe that sexual images and fantasies related to children are not harmful (D. Howitt and K. Sheldon, "The Role of Cognitive Distortions in Paedophilic Offending: Internet and Contact Offenders Compared," 13 *Psychol., Crime, & L.* 469–86 (2007)) and contact sex offenders have a greater number of cognitive distortions that would impair empathy for victims. (I.A. Elliot, A.R. Beech, R. Mandeville-Norden, and E. Hayes, "Psychological Profiles of Internet Sexual Offenders: Comparisons With Contact Sexual Offenders," 21 *Sexual Abuse: A J. of Res. & Treatment* 76–92 (2009).) Internet

offenders were found to be able to identify with fictional/fantasy characters more than contact offenders. (Elliot et al., 2009, supra.) Webb, Craissati, and Keen found that Internet child pornography offenders had lower

psychopathy scores but more sexual self-regulation difficulties (such as frequency of pornography use generally) than contact sex offenders. (Webb, Craissati, and Keen, "Characteristics of Internet Child Pornography Offenders: A Comparison With Child Molesters," 19 *Sexual Abuse: A J. of Res. & Treatment* 449–65 (2007).)

Sexual Arousal Patterns. One prominent study that has generated considerable concern regarding child pornography offenders is that by Seto, Cantor, and Blanchard. (Seto, Cantor, and Blanchard, "Child Pornography Offenses Are a Valid Diagnostic Indicator of Pedophilia," 115 *J. of Abnormal Psych.* 610–5 (2006).) Seto et al. (2006) used phalometry to investigate the sexual arousal patterns of child pornography offenders, comparing their sexual arousal patterns to three other groups: contact sex offenders with child victims; contact sex offenders with adult victims; and general sexuality patients (that is, those individuals without a specific paraphilia). They found that child pornography offenders as a group showed more sexual arousal to children than to adults. Moreover, the sample of child pornography offenders actually showed higher arousal to children in many cases than did the sample of contact child offenders. Seto et al. (2006) concluded that

child pornography possession is a good indicator of a pedophilic sexual interest pattern. This is cause for concern, given that prior research indicates that, generally, pedophilic sexual arousal is associated with higher rates of recidivism among contact sex offenders. (R.K. Hanson and M.T. Bussiere, "Predicting Relapse: A Meta-analysis of Sexual Offender Recidivism Studies," 66 *J. of Consulting & Clinical Psych.* 348–62 (1998); M.C. Seto and M.L. Lalumiere, "A Brief Screening Scale to Identify Pedophilic Interests Among Child Molesters," 13 *Sexual Abuse: A J. of Res. & Treatment* 15–25 (2001).)

Both the Hernandez studies, indicating a high number of unreported prior contact sex offenses among child pornography offenders, and the Seto et al. study, indicating a high level of pedophilic sexual arousal among child pornography offenders, raise concerns regarding this population. Both studies raise the possibility that, as feared by the general public, child pornography offenders are contact offenders in the making (if not already).

Recidivism of Pornography Offenders. The studies with the most relevance to this issue are the most difficult to conduct:

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prospective studies that follow child pornography offenders to determine whether they later commit new contact or child pornography offenses. These studies are particularly difficult with child pornography offenders, because, as noted previously, until recently, no large sample of such offenders existed to follow forward in time. Presently, there are only three studies that have followed child pornography offenders forward to determine recidivism. Seto and Eke found a recidivism rate (using new arrests or convictions) of 1.3% for contact offenses and 5.3% for child pornography offenses after 2.5 years. (Seto and Eke, "The Criminal Histories and Later Offending of Child Pornography Offenders," 17 *Sexual Abuse: A J. of Res. & Treatment* 201-10(2005).) In an extension of their original study, Seto and Eke found that at roughly six years (with a larger sample of child pornography offenders), 7% had a new contact sex offense arrest or conviction and 8% had a new child pornography offense arrest or conviction. (Seto and Eke, "The Relationship Between Pornography Use and Sexual Offending," presentation at the 27th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA (2008).) The most recent study found that after six years, 0.8% of child pornography offenders committed a new contact offense and 3.9% committed a new child pornography offense (even using the broad definition of investigations counting as new offenses). (Endrass et al., 2009, supra.) Consistently, these studies indicate that among child pornography offenders, the best predictor of future sex offending is a prior criminal history, especially a prior contact sex offense criminal history. Rates of future sex offending among child pornography offenders without a prior offense history were low.

Risk Assessment

How is one to assess risk in this population? The following are a few possible methods.

Unstructured Professional Judgment.

Let me first say how risk assessment is not to be done—unstructured professional judgment. Perhaps 15 years ago, most risk assessments were done by this method, an unstructured interview and psychological testing of the individual with a resulting rough formulation regarding risk. There is overwhelming evidence that unstructured professional judgment has poor reliability and validity in virtually all areas of prediction and particularly with regard to sex offense

recidivism. (D.A. Andrews, J. Bonta, and S.J. Wormith, "The Recent Past and Near Future of Risk and/or Need Assessment," 52 *Crime & Delinq.* 7-27 (2006); J. Monahan, "Clinical and Actuarial Prediction of Violence," in D. Faigman, D. Kaye, M. Saks, J. Sanders, and E. Cheng, eds., *Modern Scientific Evidence: The Law and Science of Expert Testimony* 122-47 (West Publishing 2007); R.J. Hanson and K.E. Morton-Bourgon, "The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-analysis of 118 Prediction Studies," 21 *Psychol. Assessment* 1-21 (2009).) As Hanson and Morton-Bourgon note:

It is widely accepted that evaluations based on unstructured professional judgment are less accurate than structured risk assessments ... This general pattern has been documented for at least 50 years. (Hanson and Morton-Bourgon, 2009, supra, at 1 [citations omitted].)

Despite the consistent evidence that unstructured clinical judgment is an inaccurate method of assessing risk, one still sees this method used regularly by professionals who should know better.

Structured Professional Judgment.

Although it is clear that unstructured professional judgment, as noted above, is a poor method of assessing risk, structured professional judgment has a good track record with other populations, such as contact sex offenders. One study (R.P. Archer, J.K. Buffington-Vollum, R.V. Stredny, and R.W. Handal, "A Survey of Psychological Test Use Patterns Among Forensic Psychologists," 87 *J. of Personality Assessment* 84-94 (2006)) found that in assessing risk with contact sex offenders, a particular structured professional judgment tool, the Sexual Violence Risk-20 (SVR-20) was the second most frequently used instrument. (D.P. Boer, S.D. Hart, P.R. Kropp, and C.D. Webster, *Manual for the Sexual Violence Risk-20: Professional Guidelines for Assessing Risk of Sexual Violence* (British Columbia Inst. Against Family Violence 1997).) In a recent meta-analysis, Hanson and Morton-Bourgon (2009) found that the SVR-20 was a close second in predictive ability to actuarial measures. The SVR-20 has the following criteria:

1. Sexual deviation;
2. Victim of child abuse;
3. Psychopathy;
4. Major mental illness;
5. Substance use problems;

6. Suicidal/homicidal ideation;
 7. Relationship problems;
 8. Employment problems;
 9. Past nonsexual violent offenses;
 10. Past nonviolent offenses; and
 11. Past supervision failure.
- Sexual offenses:
1. High density sex offenses;
 2. Multiple sex offense types;
 3. Physical harm to victim(s) in sex offenses;
 4. Uses weapons or threats of death and sex offenses;
 5. Escalation in frequency or severity of sex offenses;
 6. Extreme minimization or denial of sex offenses; and
 7. Attitudes that support or condone sex offenses.
- Future plans:
1. Lacks realistic plans; and
 2. Negative attitude toward intervention.

Clearly, some of the above criteria, in particular those criteria that referred to victim harm, would need to be modified or omitted for Internet child pornography offenders. However, certainly one can draw reasonable inferences about the extent of a sexually deviant, perhaps sadistic, sexual interest pattern if the child pornography offender were viewing Internet child pornography involving physical harm to or use of weapons with the children in the sexual images or movies.

Although there is debate regarding whether one should score the SVR-20 mechanistically (by simply adding up points for each item) or more impressionistically (by integrating the findings using one's clinical judgment), in either case, the assessment benefits from a structured, clear foundation in factors generally found to be related to sex offender recidivism. One can see, in fact, that the psychosocial adjustment section of the SVR-20 overlaps with the characteristics assessed by the Stable-2007 and the Acute-2007 and the sex offense characteristics section overlaps with historical actuarial scales generally used to evaluate risk in contact sex offenders; consequently, use of these instruments is not mutually exclusive.

Structured Assessment of Current and Recent Adjustment. With contact sex offenders, it is well established that an individual's current and recent adjustment in part

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determines whether he will commit a new sex offense; an individual who is managing his life well presents less risk than an individual whose life is in disarray. Hanson and Harris have conducted ongoing research, the Dynamic Supervision Project, to determine how best to assess current and recent adjustment. (R.K. Hanson and J.R. Harris, "A Structured Approach to Evaluating Change Among Sexual Offenders," 13 *Sexual Abuse: A J. of Res. & Treatment* 105-22 (2001).)

Two instruments have come out of Hanson and Harris' Dynamic Supervision Project: the Stable-2007 and the Acute-2007. (R.K. Hanson, J.R. Harris, T. Scott, and L. Helmus, "Assessing the Risk of Sexual Offenders on Community Supervision: The Dynamic Supervision Project" (Public Safety Canada 2007); available at http://Statel99.org/pdffdocs/hansonharris_cottanahelmus2007.pdf.) The Stable-2007 focuses on dynamic, changeable personal risk factors, but those that can change only slowly, with effort over time. The sampling period for the Stable-2007 is the past 12 months. The Stable-2007 items are:

1. Significant social influences;
2. Capacity for relationship stability;
3. Emotional identification with children;
4. Hostility toward women;
5. General social rejection;
6. Lack of concern for others;
7. Impulsive;
8. Poor problem-solving skills;
9. Negative emotionality;
10. Sex drive/sex preoccupation;
11. Sex as coping;
12. Deviant sexual preference; and
13. Cooperation with supervision.

A detailed scoring manual is available from the Stable-2007 authors to guide administration. Moreover, the above-cited research regarding the Dynamic Supervision Project indicates that those individuals who score poorly regarding these risk factors are more likely to commit a new sex offense (although the Dynamic Supervision Project focused on contact sex offenses).

A second instrument to result from the Dynamic Supervision Project is the Acute-2007, an instrument that focuses on immediate, present adjustment—that is, factors that can change quite rapidly and that might immediately precipitate a reoffense. The sampling period for the Acute-2007 is the

present time. The Acute-2007 items related to sexual offense recidivism are:

1. Victim access;
 2. Hostility;
 3. Sexual preoccupation; and
 4. Rejection of supervision.
- There are three additional items related to general recidivism, namely:
1. Emotional collapse;
 2. Collapse of social supports; and
 3. Substance abuse.

As noted above, the Dynamic Supervision Project focused on contact sex offenders, as opposed to Internet child pornography offenders, so it does require some extrapolation to apply the scales to Internet child pornography offenders. Fortunately, however, there is one study that has applied a precursor of one of these instruments to Internet child pornography offenders. The previously cited study by Webb, Craissari, and Keen (2007) did apply the Stable-2000 (an earlier version of the Stable-2007) to their sample of 90 Internet child pornography offenders and 120 contact child molesters. Webb et al. found that among the Internet child pornography offenders the Stable-2000 significantly predicted what the authors described as "sexually risky behaviors," those consisting of either continuing to access adult pornography daily or having a new sex-related allegation or charge (AUC = 0.71). Webb et al. state:

The Stable-2000 was able to identify high levels of difficulty in all the dynamic domains for both contact and Internet offenders particularly so with intimacy deficits and general self-regulation The dynamic domains are useful in identifying treatment need in both types of sex offenders and possibly providing a post-treatment assessment of change. (Webb et al., 2007, *supra*, at 461.)

Sample Areas Associated With Risk

Specialized risk assessment measures for contact sex offenders have been in use

for over a decade. The two accepted and well-validated methods for assessing risk of recidivism among contact sex offenders are actuarial scales and structured professional judgment. Unstructured professional judgment for assessing risk in a variety of contexts is no longer seen as acceptable by most authorities. So far, no risk assessment instruments have been developed or standardized specifically for Internet child pornography offenders. Nonetheless, I see no reason to expect that risk assessment methods acceptable for contact sex offenders would not also be acceptable for Internet child pornography users. In fact, the one study that examined this issue empirically found that measures that assessed static, historical risk and dynamic, changeable risk were significantly associated with recidivism in child pornography offenders—just as is the case with contact sex offenders. (Webb et al., 2008, *supra*.) I have reviewed above three instruments that can guide the evaluator in assessing risk among child pornography users: the Stable-2007, Acute-2007, and SVR-20. These instruments sample areas relevant to child pornography offenders. Use of structured methods such as these will ensure that the evaluator systematically samples areas associated with risk and communicates the findings in an organized, structured, transparent manner.

Philip H. Witt is a principal in Associates in Psychological Services, P.A., in Somerville, NJ. He is a diplomate in forensic psychology of the American Board of Professional Psychology, performing forensic evaluation in a wide range of civil and criminal areas. He is a clinical associate professor at Robert Wood Johnson Medical School. A past president of the New Jersey Psychological Association, he was the 2001 recipient of that organization's Psychologist of the Year award. Previously editor-in-chief for the Journal of Psychiatry and Law, he currently serves as associate editor of the Open Access Journal of Forensic Psychology and president of the American Academy of Forensic Psychology. He can be contacted at (908) 526-1177, x22; PHWitt@optonline.net. ■