

SEX OFFENDER CONTINUUM

Adapted from

CHAPTER FOUR

CYBER "PEDOPHILES": A BEHAVIORAL PERSPECTIVE

in *Prosecuting Internet Child Exploitation Crimes*

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By

Kenneth V. Lanning

(Retired FBI Agent)

Fredericksburg, VA

4.1 Introduction

Caution: This chapter will focus on insight into the behavioral patterns of offenders and victims in sexual exploitation of children cases involving computers. The information and its application are based on my education, training, and more than 27 years of experience studying the criminal aspects of deviant sexual behavior and interacting with investigators and prosecutors. Although I have great confidence in its behavioral accuracy and reliability, its legal acceptance and application must be evaluated by prosecutors based on agency policy, rules of evidence, and current case law. The use of terms in this chapter which are also utilized in the mental health field (i.e., impulsive, compulsive, pedophilia) is not meant to imply a psychiatric diagnosis or lack of legal responsibility. The sexual victimization of children involves varied and diverse dynamics. It can range from one-on-one intrafamilial abuse to multioffender/multivictim extrafamilial sex rings and from stranger abduction of toddlers to prostitution of teenagers.

4.6 Paraphilias and Sexual Ritual Behavior

Paraphilias are psychosexual disorders defined for clinical and research purposes in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition, Text Revision, commonly referred to as the DSM-IV-TR, (American Psychiatric Association, 2000). They are defined as recurrent, intense, sexually arousing fantasies, urges, or behaviors that generally involve 1) nonhuman objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other nonconsenting persons, and that occur over a period of at least six months. Better known and more common paraphilias include the following: Exhibitionism (exposure), Fetishism (objects), Frotteurism (rubbing), Pedophilia (child), Sexual Masochism (self pain), Sexual Sadism (partner pain), and Voyeurism (looking). Less known and less common Paraphilias include the following: Scatologia (talk), Necrophilia (corpses), Partialism (body parts), Zoophilia (animals), Coprophilia (feces), Klismaphilia (enemas), Urophilia (urine), Infantilism (baby), Hebephilia (female youth), Ephebophilia (male youth) and many others.

In the real world, each of the paraphilias typically has: 1) slang names (e.g., big baby, golden showers, S&M), 2) an industry that sells related paraphernalia and props (e.g., restraining devices, gags, adult size baby clothing), 3) a support network (e.g., North American Man/Boy Love Association or NAMBLA, Diaper Pail Fraternity), and 4) a body of literature (i.e., pornography). In fact, the paraphilias are the organizational framework or the "Dewey Decimal System" of pornography, obscenity, adult bookstores, and Internet sex chat rooms.

Paraphilias are psychosexual disorders and not types of sex crimes. They may or may not involve criminal activity. Individuals suffering from one or more of these paraphilias can just engage in fantasy and masturbate, or they can act out their fantasies legally (e.g., consenting adult partners, objects), or they can act out their fantasies illegally (e.g., nonconsenting partners, underage partners). It is their choice.

Although any of the paraphilias could become elements of a computer child sexual exploitation case, Pedophilia is the most obvious and the one best known to prosecutors dealing with these cases. It is important for prosecutors to understand that the diagnostic criteria for Pedophilia require that there be recurrent, intense, and sexually arousing fantasies, urges or behaviors involving prepubescent children, generally age 13 or younger. The absence of any of the key criteria could eliminate the diagnosis. For example, an individual with a strong preference for and repeatedly engaging in sex with large numbers of 14-year-olds could correctly be evaluated by a mental health professional as NOT a pedophile. In spite of this, some mental health professionals continue to apply the term to those with a sexual preference for pubescent teenagers.

The terms Hebephilia and Ephebophilia are not specifically mentioned in the DSM-IV-TR, and are rarely used, even by mental health professionals. They are, however, being increasingly used in forensic evaluations submitted to the court by defendants attempting to minimize their sexual behavior. Although sexual attraction to pubescent children by adults has the obvious potential for criminal activity, it does not necessarily constitute a sexual perversion as defined by psychiatry.

On an investigative level, the presence of paraphilias often means highly repetitive and predictable behavior, focused on specific sexual interests, that goes well beyond a "method of operation" (MO). The concept of an MO--something done by an offender because it works and will help him get away with the crime--is well known to most investigators. An MO is fueled by thought and deliberation. Most offenders change and improve their MO over time and with experience.

The repetitive behavior patterns of some sex offenders can and do involve some MO, but are more likely to also involve the less-known concept of sexual ritual. Sexual ritual is the repeated engaging in an act or series of acts in a certain manner because of a sexual need; that is, in order to become aroused and/or gratified, a person must engage in the act in a certain way. Some aspects of the MO of sex offenders can, if repeated often enough during sexual activity, become part of the sexual ritual. Other types of ritual behavior can be motivated by psychological, cultural, or spiritual needs. Unlike an MO, ritual is necessary to the offender but not to the successful commission of the crime. In fact, instead of facilitating the crime, ritual often increases the odds of identification, apprehension, and conviction because it causes the offender to make need-driven mistakes.

Ritual and its resultant behavior are fueled by erotic imagery and fantasy and can be bizarre in nature. Most important to investigators, offenders find it difficult to change and modify ritual, even when their experience tells them they should or they suspect law enforcement scrutiny. The ritual patterns of sex offenders have far more significance as prior like acts than the MO of other types of offenders. Understanding sexual ritual is the key to investigating certain sex offenders. The courts in this country have, however, been slow to recognize and understand the difference between MO and ritual.

4.7 The Distinction between a "Pedophile" and a Child Molester

The general public, the media, and many child abuse professionals sometimes simplistically refer to all those who sexually victimize children as pedophiles. There is no single or uniform definition for the word "pedophile." As previously stated, for mental health professionals, it is a diagnostic term referring to persons with recurrent, intense sexually arousing fantasies, urges, or behaviors involving prepubescent children. Technically, Pedophilia is a psychiatric diagnosis that can only be made by qualified psychologists or psychiatrists. Therefore, for many, the word is a diagnostic term, not a legal one.

What, then, is the difference between a child molester and a pedophile? For many, the terms have become synonymous. For them, the word pedophile is just a fancy term for a child molester. The media frequently make no distinction and use the terms interchangeably. The term Pedophilia is being used more and more by law enforcement and prosecutors, especially in cases involving the use of computers. It has even entered their slang usage--with some talking about investigating a "pedo case" or being assigned to a "pedo squad." Although Americans most often pronounce the "ped" in "pedophilia" as the "ped" in "pedestrian" (from the Latin for foot), the correct pronunciation is "ped" as in "pediatrician" (from the Greek for child).

Not all pedophiles are child molesters. A person suffering from any paraphilia can legally engage in it simply by fantasizing and masturbating. A child molester is an individual who sexually molests children. A pedophile might have a sexual preference for children and fantasize about having sex with them, but if he does not act out, he is not a child molester. Some pedophiles might act out their fantasies in legal ways by simply talking to or watching children and later masturbating. Some might have sex with dolls and mannequins that resemble children. Some pedophiles might act out their fantasies in legal ways by engaging in sexual activity with adults who look (small stature, flat chested, no body hair), dress, or act (immature, baby talk) like children. Others may act out child fantasy games with adult prostitutes. A difficult problem to detect and address is that of individuals who act out their sexual fantasies by socially interacting with children (i.e., in-person or via an online computer), or by interjecting themselves into the child sexual abuse or exploitation "problem" as overzealous child advocates (i.e., cyber vigilantes). It is almost impossible to estimate how many pedophiles exist who have never molested a child. What society can, or should, do with regard to such individuals is an interesting area for discussion but beyond the role of prosecutors. People cannot be arrested for their fantasies.

Not all child molesters are pedophiles. A pedophile is an individual who prefers to have sex with children. A person who prefers to have sex with an adult partner may, for any number of reasons,

decide to have sex with a child. Such reasons might include simple availability, curiosity, or a desire to hurt a loved one of the molested child. The sexual fantasies of such individuals do not necessarily focus on children, and these people are not pedophiles.

Are child molesters with adolescent victims pedophiles? Are individuals who collect both child and adult pornography pedophiles? Is everyone using a computer to facilitate having sex with children, or trafficking in child pornography, a pedophile? Many child molesters are, in fact, pedophiles, and many pedophiles are child molesters. But they are not necessarily one and the same. Labeling all child molesters as pedophiles can be confusing. Often, it may be unclear whether the term is being applied with its diagnostic or with some other definition. Most investigators and prosecutors are not qualified to apply the term with its diagnostic meaning.

I recommend that investigators and prosecutors minimize the use of the term "pedophile." For the purposes of this discussion, the term "pedophile" when used will be defined as a significantly older individual who prefers to have sex with individuals legally considered children. Pedophiles are individuals whose erotic imagery and sexual fantasies focus on children. They do not settle for child victims, but, in fact, prefer to have sex with children. The law, not puberty, determines who is a child. A pedophile is just one example or subcategory of what I refer to as a "preferential sex offender." The term preferential sex offender is merely a descriptive label used only to identify, for investigative and prosecutive purposes, a certain type of offender. The term does not appear in the DSM-IV-TR and it is not intended to imply or to be used for clinical diagnosis.

It is important to realize that to refer to someone as a pedophile is to say only that the individual has a sexual preference for children. It says little or nothing about the other aspects of his character and personality. To assume that someone is not a pedophile simply because he is nice, goes to church, works hard, is kind to animals, and so on, is absurd. Pedophiles span the full spectrum from saints to monsters. In spite of this fact, over and over again pedophiles are not recognized, investigated, charged, convicted, or sent to prison simply because they are "nice guys."

4.8 Typology of Sex Offenders

When distinctions between types of offenders need to be made, I recommend the use of a descriptive typology developed for criminal justice purposes. This discussion will set forth such a typology.

My original typology of child molesters was developed in the mid-1980's and was published and widely disseminated by the National Center for Missing and Exploited Children (NCMEC) in a monograph entitled *Child Molesters: A Behavioral Analysis*. It was revised in April 1987 (2nd edition) and again in December 1992 (3rd edition). It divided child molesters into two categories (Situational or Preferential) and into seven patterns of behavior. Although still useful, this old typology has several limitations and has been updated by a new typology that places sex offenders, not just child molesters, along a motivational continuum (Situational to Preferential) instead of into one of two categories. Although motivation can often be difficult to determine, it

is best evaluated by documenting behavior patterns. A detailed discussion of this newer typology was published by the NCMEC in September 2001.

At one end of the continuum are the more "situational" sex offenders. They tend to be less intelligent and are over represented in lower socioeconomic groups. Their criminal sexual behavior tends to be in the service of basic sexual needs or nonsexual needs such as power and anger. Their behavior is often opportunistic and impulsive, but primarily thought-driven. They are more likely to consider the risks involved in their behavior, but often make stupid or sloppy mistakes. If they collect pornography, it is often violent in nature, reflecting their power and anger needs. Their patterns of behavior are more likely to involve the previously discussed concept of Method of Operation (MO).

Situational type sex offenders victimizing children do not have a true sexual preference for children. They may molest them, however, for a wide variety of situational reasons. They are more likely to view and be aroused by adult pornography, but might engage in sex with children in certain situations. Situational sex offenders frequently molest readily available children that they have easy access to, such as their own or those they may live with or have control over. Pubescent teenagers are high-risk, viable sexual targets. Younger children may also be targeted because they are weak, vulnerable, or available. Psychopathic situational offenders may select children, especially adolescents, simply because they have the opportunity and think they can get away with it. Social misfits may select children out of insecurity and curiosity. Others may have low self-esteem and use children as substitutes for preferred adults.

At the other end of the motivation continuum are the more "preferential" sex offenders. They tend to be more intelligent and are over represented in higher socioeconomic groups. Their criminal sexual behavior tends to be in the service of deviant sexual needs known as paraphilias. This behavior is often scripted and compulsive and is primarily fantasy-driven. Repeated fantasy over time creates need. They are more likely to consider their needs and therefore make "needy" mistakes that often seem almost stupid. When they collect pornography and related paraphernalia, it usually focuses on the themes of their paraphiliac preferences. Their patterns of behavior are more likely to involve the previously discussed concept of ritual.

4.9 The Motivation Continuum

Motivation Continuum	
Nonsexual Needs	Deviant Sexual Needs
(not one or the other, but a continuum)	
Situational Sex Offender (>More likely)	Preferential Sex Offender (>More likely)
<ol style="list-style-type: none"> 1. Less Intelligent 2. Lower Socioeconomic Status 3. Psychopathy 4. Varied Criminal Behavior 5. Violent Pornography 6. Impulsive 7. Considers Risk 8. Sloppy Mistakes 9. Thought-Driven 10. Spontaneous or Planned 11. MO Patterns of Behavior 	<ol style="list-style-type: none"> 1. More Intelligent 2. Higher Socioeconomic Status 3. Paraphilias 4. Focused Criminal Behavior 5. Theme Pornography 6. Compulsive 7. Considers Need 8. Needy Mistakes 9. Fantasy-Driven 10. Script 11. Ritual Patterns of Behavior

As this descriptive term implies, preferential type sex offenders have specific sexual preferences or paraphilias. Those with a preference for children could be called "pedophiles." Those with a preference for peeping could be called voyeurs, with a preference for suffering could be called sadists, etc. But one of the purposes of this typology is to avoid these diagnostic terms. Preferential type sex offenders are more likely to view, be aroused by, and collect theme pornography. Some preferential sex offenders **without** a preference for children do molest children in order to carry out their bizarre sexual fantasies and preferences with young, less threatening, less judgmental, and highly vulnerable victims. Some of these offenders' sexual activity with children may involve acts they are embarrassed or ashamed to request or do with a preferred adult partner. Such offenders, even if they do not have a sexual preference for children, would still be preferential sex offenders and therefore engage in similar patterns of behavior.

There are many advantages to the use of this criminal justice, descriptive typology. If there is a need to distinguish a certain type of sex offender, this typology provides a name or label instead of just calling them "these guys." The label is professional in contrast to referring to them as "pervert" or "sicko" or worse. Because the terms are descriptive, not diagnostic, and probative, not prejudicial, they may be more acceptable in reports, search warrants, and testimony by criminal justice professionals. For example, the currently popular term "predator" might be considered too prejudicial for court testimony. The continuum concept also better addresses the complexity of and changes in human behavior. Using the term "preferential sex offender" instead of "preferential child molester," addresses the issue of applying it to offenders who collect child pornography without physically molesting children. The one term, preferential sex offender, eliminates the need for investigators and prosecutors to distinguish between child pornography

collectors and child molesters, between pedophiles and hebephiles, and among numerous other paraphilias. How to recognize and identify such offenders will be discussed shortly.

Prosecutors might argue that it is their job to prosecute individuals who violate the law and that whether or not that offender is a pedophile or a preferential sex offender is of little importance to them. There is no legal requirement to determine that a subject or suspect in a case is a pedophile or preferential sex offender. Often it is irrelevant to the investigation or prosecution. There are, however, clear differences between the types of individuals who sexually victimize children, and prosecutors handling these cases sometimes need to make such distinctions. Although there is not a "profile" that will determine if someone is a child molester, preferential sex offenders tend to engage in highly predictable and recognizable behavior patterns. The potential evidence available as a result of the long-term, persistent, and ritualized behavior patterns of many sexual exploiters of children make these cases almost prosecutors' heaven.

Need-driven behavior leads to bewildering mistakes. Why would a reasonably intelligent individual use his computer at work to download child pornography, deliver his computer filled with child pornography for repair, send his film with child pornography on it to a store to be developed, appear in child pornography images he is making, discuss engaging in serious criminal activity with a "stranger" he met on the Internet, transmit identifiable photographs of himself to such an individual, maintain incriminating evidence knowing investigators might soon search his home or computer, give investigators permission to search his home or computer knowing it contains incriminating evidence, agree to be interviewed, etc.

Defense attorneys might argue that such behavior indicates that their clients are innocent, lack criminal intent, or are not criminally responsible. Why else would an intelligent individual do something so obviously stupid? Such behavior does not necessarily mean the offender is insane or not criminally responsible. Another explanation is much more probable--it is need-driven. The fantasy- or need-driven behavior of preferential sex offenders has little to do with thinking. As a father cautioned his son in the movie "The Bronx Tales," it is more a matter of the "little head" telling the "big head" what to do. It is what makes preferential sex offenders so vulnerable to proactive investigations even though the techniques used have been well publicized. If necessary, an expert could be used to educate the court concerning certain patterns of behavior. The use of such an expert was upheld in *United States v. Romero*, 189 F.3d 576 (7th Cir. 1999).

Prosecutors should be aware of a "Cautionary Statement" that appears on page xxxvii of the DSM-IV-TR and reads in part that:

It is to be understood that inclusion here, for clinical and research purposes, of a diagnostic category such as **Pathological Gambling or Pedophilia** (emphasis added) does not imply that the condition meets legal or other nonmedical criteria for what constitutes mental disease, mental disorder, or mental disability. The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments, for example, that take into account such issues as individual responsibility, disability determination, and competency.

4.10 Computer Offenders

Offenders using computers to sexually exploit children tend to fall into three broad categories:

1. Situational Offenders:

- A. **"Normal" Adolescent/Adult** - Usually a typical adolescent searching online for pornography and sex or an impulsive/curious adult with newly found access to a wide range of pornography and sexual opportunities.
- B. **Morally Indiscriminate** - Usually a power/anger motivated sex offender with a history of varied violent offenses. Parents, especially mothers, who make their children available for sex with individuals on the Internet would also most likely fit in this category.
- C. **Profiteers** - With the lowered risk of identification and increased potential for profit, the criminal just trying to make easy money has returned to trafficking in child pornography.

When situational type offenders break the law, they can obviously be investigated and prosecuted, but their behavior is not as long-term, persistent, and predictable as that of preferential offenders. They are a more varied group.

2. Preferential Offenders:

- A. **Pedophile** - offender, as previously discussed, with a definite preference for children.
- B. **Diverse** - offender with a wide variety of paraphiliac or deviant sexual interests, but no strong sexual preference for children. This offender was previously referred to in my typology as the sexually indiscriminate.
- C. **Latent** - Individuals with potentially illegal, but previously latent sexual preferences who have more recently begun to criminally act out when their inhibitions are weakened after their arousal patterns are fueled and validated through online computer communication.

The essential difference between the pedophile type and the diverse type of preferential offender is the strength of their sexual preference for children. The pedophile type is primarily interested in sex with children that might, in some cases, involve other sexual deviations or paraphilias. The diverse type is primarily interested in a variety of sexual deviations that might, in some cases, involve children. For example, the pornography and erotica collection of the diverse preferential offender will be more varied, usually with a focus on their particular sexual preferences or paraphilias (sometimes involving children), whereas a pedophile's collection will focus predominately on children (sometimes involving paraphilias). If children are being victimized, the diverse offender is more likely to directly molest pubescent children. More naive prepubescent children, however, are sometimes selected to minimize confronting possible challenges to, or embarrassment over, their deviant sexual interests. With an absence of prior criminal sexual activity, latent offenders present problems concerning what prosecution and sentence is appropriate. A thorough investigation and a good forensic psychological evaluation,

possibly aided by the use of the polygraph or other deception assessment devices, are helpful in evaluating such apparent "latent" offenders.

3. Miscellaneous "Offenders":

- A. **Media Reporters** - individuals who erroneously believe they can go online and traffic in child pornography and arrange meetings with suspected child molesters as part of an authorized and valid news expose.
- B. **Pranksters** - individuals who disseminate false or incriminating information to embarrass the targets of their "dirty tricks."
- C. **Older "Boyfriends"** - individuals in their late teens or early twenties attempting to sexually interact with adolescent girls or boys.
- D. **Overzealous Citizens** - individuals who go overboard doing their own private investigations into this problem. As will be discussed, investigators must be cautious of all overzealous citizens offering their services in these cases.

Although these miscellaneous "offenders" may be breaking the law, they are obviously less likely to be prosecuted. This category includes media reporters breaking the law as part of a bona fide news story. It does **not** include reporters, or any other professionals, who engage in such activity to hide or rationalize the fact that they have a personal interest in it. They would be situational or preferential offenders. Overzealous citizens could also include sex offender therapists and researchers engaging in this type activity. **Only** law enforcement officers, as part of official, authorized investigations, should be conducting proactive investigation or downloading child pornography on a computer. It should be noted that Federal law does allow an affirmative defense for the possession of child pornography, but **only if**: 1) **less than 3 matters** are possessed and 2) it is **promptly** and in good faith, and without retaining or allowing access to any person, **destroyed or reported to a law enforcement agency that is afforded access to each depiction** (18 U.S.C.A. § 2252(c)). The test for those claiming professional use for child pornography should be twofold. Do they have a professional use for the material and were they using it professionally? Both standards must be met in order to seriously consider the claim.

Although a variety of individuals sexually victimize children, preferential sex offenders, for now, are the primary sexual exploiters of children. They tend to be serial offenders who prey on children through the operation of child sex rings and/or the collection, creation, or distribution of child pornography. Using a computer to fuel and validate interests and behavior, to facilitate interacting with child victims, or to possess and traffic in child pornography usually requires the above-average intelligence and economic means more typical of preferential sex offenders. The computer sex offenders discussed here have tended to be white males from a middle class or higher socioeconomic background. As computers and use of the Internet have become more commonplace, however, there are now increasing numbers of the more varied situational sex offenders.

4.11 Recognizing Preferential Sex Offenders

An important step in investigating sexual exploitation of children is to recognize and utilize, if present, the highly predictable sexual behavior patterns of these preferential sex offenders. If the

investigation identifies enough of these patterns, many of the remaining ones can be assumed. However, no particular number constitutes "enough." A few may be enough if they are especially significant. Most of these indicators mean little by themselves, but as they are identified and accumulated through investigation, they can constitute reason to believe a suspect is a preferential sex offender.

You cannot determine the type of offender with whom you are dealing unless you have the most complete, detailed, and accurate information possible. The investigator must understand that doing a background investigation on a suspect means more than obtaining the date and place of birth and credit and criminal checks. School, juvenile, military, medical, driving, employment, bank, sex offender and child abuse registry, sex offender assessment, computer, and prior investigative records can all be valuable sources of information about an offender.

A preferential sex offender can usually be identified by the following behaviors:

1. Long-Term and Persistent Pattern of Behavior
 - A) Begins pattern in early adolescence
 - B) Is willing to commit time, money, and energy
 - C) Commits multiple offenses
 - D) Makes ritual or need-driven mistakes
2. Specific Sexual Interests
 - A) Manifests paraphiliac preferences (may be multiple)
 - B) Focuses on defined sexual interests and victim characteristics
 - C) Centers life around preferences
 - D) Rationalizes sexual interests
3. Well-developed Techniques
 - A) Evaluates experiences
 - B) Lies and manipulates, often skillfully
 - C) Has method of access to victims
 - D) Is quick to use modern technology (e.g., computer, video) for sexual needs and purposes.
4. Fantasy-Driven Behavior
 - A) Collects theme pornography
 - B) Collects paraphernalia, souvenirs, videotapes, etc.
 - C) Records fantasies
 - D) Acts to turn fantasy into reality

Prosecutors must not over or under react to reported allegations. They must understand that not all computer offenders are stereotypical "pedophiles" who fit some common profile. Keeping an open mind and objectively attempting to determine the type of offender involved can be useful in minimizing embarrassing errors in judgment and developing appropriate interview, investigative, and prosecutive strategies. For example, the fact that preferential offenders as part of sexual ritual

are more likely to commit similar offenses, make need-driven mistakes, and compulsively collect pornography and other offense related paraphernalia could be used to build a stronger case.

In computer cases, especially those involving proactive investigative techniques, it is often easier to determine the type of offender than in other kinds of child sexual exploitation cases. When attempting to make this determination, it is important to evaluate all available background information. The following information from the online computer activity can be valuable in this assessment. This information can often be ascertained from the online service provider and through undercover communication, pretext contacts, informants, record checks, and other investigative techniques (e.g., mail cover, pen register, trash run, surveillance).

- | | |
|-------------------------------|------------------------------|
| * Screen Name | * Number of Files Originated |
| * Screen Profile | * Number of Files Forwarded |
| * Accuracy of Profile | * Number of Files Received |
| * Length of Time Active | * Number of Recipients |
| * Amount of Time Spent Online | * Site of Communication |
| * Number of Transmissions | * Theme of Messages & Chat |
| * Number of Files | * Theme of Pornography |

A common problem in these cases is that it is often easier to determine a computer is being used than to determine who is using the computer. It is obviously harder to do a background investigation when multiple people have access to the computer. Pretext phone calls can be very useful in such situations.

Exaggerated Example: An investigation determines that a suspect is a 50-year-old single male who does volunteer work with troubled boys, has two prior convictions for sexually molesting young boys in 1974 and 1986, has an expensive state-of-the-art home computer, has a main screen name of "Boylover" and one screen profile that describes him as a 14-year-old, has for the last five years daily spent many hours online in chat rooms and the "alt.sex.preteen" Newsgroup justifying and graphically describing his sexual preference for and involvement with young boys, and brags about his extensive pornography collection while uploading hundreds of child pornography files, all focusing on preteen boys in bondage, to dozens of individuals all over the world. If such a determination were relevant to the case, these facts would constitute more than sufficient probable cause to believe this suspect is a preferential sex offender.

Knowing the kind of offender with whom you are dealing can go a long way in determining investigative and prosecutive strategy. For example, it might be useful in:

1. Anticipating and understanding need-driven mistakes
2. Evaluating the consistency of victim statements
3. Developing offender and victim interview strategies
4. Determining the existence, age, and number of victims
5. Recognizing where and what kind of corroborative evidence might be found
6. Proving intent
7. Determining appropriate charging and sentencing
8. Assessing the admissibility of prior like acts

9. Evaluating dangerousness at a bond hearing, etc.
10. Explaining behavior patterns to jury
11. Determining suitability for treatment options
12. Addressing staleness
13. Utilizing expert search warrant

4.12 "Expert" Search Warrants

Most computer exploitation cases involve searching homes, offices, and computers for child pornography and other related evidence. One controversial and misunderstood application of an offender typology is its use in so-called "expert" search warrants. In such search warrants, an expert's opinion is included in the affidavit to address a particular deficiency. The expert's opinion is usually intended to:

1. address legal staleness problems.
2. expand the nature and scope of the search (i.e., for erotica-type material or for more than one location); or
3. add to the probable cause.

Addressing staleness and expanding the scope of the search are probably the most legally defensible uses of such opinions. Using the expert's opinion as part of the probable cause, however, is much more legally questionable and should only be done in full awareness of the potential judicial consequences. In spite of the legal uncertainties of its application, there is little behavioral doubt that probable cause to believe that a given individual is a preferential sex offender is, by itself, probable cause to believe that the individual collects some type of pornography or paraphernalia related to his preferences (which may or may not include child pornography). If it is used, the expert's opinion should be the smallest possible percentage of the probable cause. As the portion of the probable cause based upon the expert's opinion increases, the expectation of a much more closely scrutinized, critical review should increase.

The affidavit should set forth **only** those offender characteristics necessary to address a specific deficiency. For example, if the expert opinion is needed only to address staleness, the only trait that matters is the tendency to add to and the unlikeliness to discard collected pornography and erotica. The expert's opinion concerning other behavioral traits could be used to justify searching a storage locker or a computer at work or searching for related paraphernalia or videotapes.

Not all offenders who might use a computer to traffic in child pornography have these traits. Therefore, the affidavit **must** set forth the reasons for the expert's conclusion that the subject of the search is among the particular group of offenders with the stated characteristics. The informational basis for the expert's opinion must be reliable, sufficient, and documented. The information must be from reliable sources and in sufficient quantity and quality to support the belief. Details concerning the information must be meticulously recorded and retrievable, especially if it is the basis for a warrant sought by another agency or department.

At this point it is useful to have a name for "these guys" with these distinctive characteristics. Although investigators have frequently called them "pedophiles" or "child pornography collectors," the term preferential sex offender is recommended for the reasons previously stated.

Expert search warrants describing highly predictable offender characteristics should only be used for subjects exhibiting preferential sexual behavior patterns. The characteristics, dynamics, and techniques (i.e., expert search warrant, etc.) discussed concerning preferential sex offenders should be considered with any of the preferential types of computer offenders (i.e., pedophile, diverse or latent). It is usually unnecessary to distinguish which type of preferential offender is involved.

Whenever possible, affidavits for search warrants should be based on reliable, case-specific facts. Because of legal uncertainties, expert search warrants should be used only when absolutely necessary. They should not be a replacement for reasonable investigation. When such warrants are used, the affidavit must reflect the specific facts and details of the case in question. Boilerplate warrants or "go-bys" should be avoided. It is also best if the expert used is part of the investigation or from the local area. Regional or national experts should be used only when a local expert is unavailable.

4.13 Staleness of Probable Cause

Because of delays in communicating details from proactive investigations, staleness is a common problem in computer exploitation cases. It may take weeks or months for the details learned from an undercover Internet investigation in one part of the country to be disseminated to investigators with jurisdiction over the target computer in another part of the country. Obviously, the best way to address the staleness of probable cause is to "freshen" it up with current investigation and information.

As stated above, staleness can also be addressed with an "expert" search warrant. Before doing so, prosecutors should do legal research and be aware of appellate decisions that support this approach. They should also be aware of Congressional "Finding" #12 in the Child Pornography Prevention Act (CPPA) of 1996 that states, "prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material..." I am not sure what this "finding" is based on, but it is contrary to my many years of experience studying preferential sex offenders, and contrary to what is usually stated in such expert search warrants.

Another way to address staleness is to recognize that the information in question may not be stale. It is a matter of differing opinion as to when the informational basis for probable cause becomes stale. Some prosecutors say in days. Others say weeks, most say months. I believe that the time interval varies based on the type of information. Because of characteristics of technology and human behavior, probable cause about information on a computer should not even be considered stale for at least one year. It is not easy to effectively delete the information on a computer, even when you try. Furthermore, most people do not delete the information on a regular basis. Such editing of a computer is likely to occur less often than cleaning out the garage, attic, or basement. Because this is a common human characteristic, it should not require the opinion of an expert.

4.14 "Concerned Citizens" Assisting Law Enforcement

Many individuals who report information to the authorities about deviant sexual activity that they have discovered on the Internet must invent clever excuses for how and why they came upon such material. They often start out pursuing their own sexual/deviant interests, but then decide to report to the police either because it went too far, because they are afraid they might have been monitored by authorities, or because they need to rationalize their perversions as having some higher purpose or value. Rather than honestly admitting their own deviant interests, they make up elaborate explanations to justify finding the material. Some claim to be journalists, researchers, or outraged, concerned citizens trying to protect a child or help the police. In any case, what they find may still have to be investigated. If information from such "concerned citizens" is part of the basis for an expert's opinion in the warrant, there could be questions about its reliability.

Investigators must consider that these "concerned citizens" reporting such activity may be individuals who:

1. Motivated by a need to rationalize or deny their deviant sexual interests, have embellished and falsified an elaborate tale of perversion and criminal activity on the Internet.
2. Regardless of their true motivations, have uncovered others using the Internet to validate and reinforce bizarre, perverted sexual fantasies and interests (a common occurrence), but who are not engaged in criminal activity.
3. Regardless of their true motivations, have uncovered others involved in criminal activity.

One especially sensitive area for investigators is the preferential sex offender who presents himself as a concerned citizen reporting what he inadvertently "discovered" in cyberspace or requesting to work with law enforcement to search for child pornography and to protect children. Other than the obvious benefit of legal justification for their past or future activity, most do this as part of their need to rationalize their behavior as worthwhile and to gain access to children. When these offenders are caught, instead of recognizing this activity as part of their preferential pattern of behavior, the courts sometimes give them leniency because of their "good deeds." Preferential sex offenders who are also law enforcement officers sometimes claim their activity was part of some well-intentioned, but unauthorized investigation.

4.33 References

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