

# Presentation on Child Pornography to the United States Sentencing Commission

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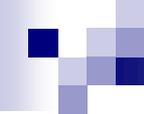
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# The Pornographic Attraction Theory (PAT)

- Pedophiles & undetected molesters watch pornography
- This causes recurrent sexual misconduct



112 CPOs were sentenced under the guidelines from 1994 to 1995.

- Prosecution was pursued in 37% of the charged cases
- 20% of the prosecution cohort = production offenders
- 31% = used a computer

The number of federal prosecutions greatly increased after 1996.



## Facts about the 2007 - 2009 prosecution cohorts.

- Between 10%-11% = sentenced for production
- 97% = used computers
- 20% had previous felony convictions
- Prosecution pursuit rate = from 37% in the 1990s to 60%

The guidelines have become more punitive. The stats below are from Sourcebooks of Federal Sentencing Statistics (1996, 2008, 2010).

Year	Types of Child Pornography Offenses	<u>N</u>	Average # of months
1994 & 95	Possession	24	15
1994 & 95	Distribution	66	29
1994 & 95	Production	79	79
1994 & 95	All	169	36
2008 (FY)	All	1,620	122
2008 (FY)	By first-time offenders	1,295	112
2010 (FY)	All	1,802	120

## The downward departure/variance rate has increased

- 2009 = 53%
- 2010 = 58%
- 2011 = 62%



Review of the CPO guidelines was set as a policy priority by the USSC in 2009.

- USSC extended this commitment in 2010 and 2011
- Present hearing part of that review
- Offers a chance to review guideline proportionality



Most studies relevant to PAT appeared after 2008.

- Seto = condensed results of 22 studies of “online offenders” into one or two average numbers about contact sex offenses
  - 12% = officially known contact offense at index offense
  - 55% = self-reported contact offenses
  
- Also condensed results of 9 post-index recidivism studies.
  - Average follow-up period was 4 years
  - 3.4% recidivated with contact sex offending
  
- Conclusions: Distinct group-rarely commit contact sex crimes.

## Limitations of Seto's meta-analysis

- Focused on online offenders not federal CPOs
- Missed recent studies
- Weighted studies equally
  - Many online studies were poorly designed.
- Conclusion: Best to look at studies of federal CPOs

# N of projects on federal CPOs = 3

- The Butner Study
  - Criticized by Wollert and colleagues
- Wollert study of outpatient CPOs
- Memorandum to Judge Weinstein
- Will summarize each

# The Butner Studies

- 2000 paper by Hernandez: CPOs reported committing more molestations in SO treatment than were in their PSIs.
- Second study by Bourke & Hernandez: Used Hernandez' earlier procedures with a bigger group of CPOs
  - 26% = CPOs with molestation crimes per their PSIs
  - 85% = CPOs with molestation crimes per treatment self-report
- Conclusions.
  - Supposedly confirmed the PAT.
  - Prison-based treatment is needed.

## Wollert, Waggoner, and Smith's criticisms of the Butner Studies

- The welfare of Butner CPOs was in Director Hernandez' hands
- Butner CPOs were fearful of program termination
- Hernandez could define contact offense however he wished
  - Male college freshman dating an 11<sup>th</sup> grade female
- Was impossible to verify accuracy of self-reports
- Staff expected ongoing disclosures
- CPOs were required to complete disclosure polygraph
- Conclusions:
  - CPOs reacted to demand characteristics by giving false reports
  - Post-release recidivism should have been studied instead

## Procedures Wollert, Waggoner, & Smith used to study CPOs

- Wollert treated 3,000 SOs & 55 CPOs from 1999-2009
- My impression from clinical experience was the PAT was wrong
- Compiled a spreadsheet of all CPO clients
- Designed spreadsheet to calculate time at risk in the community
- 17 federal CPOs seen by Dr. Smith were added

## Our findings with federal CPOs

- 4 years = average time at risk in the community
- 2 of 72 CPOs = apprehended for possessing child pornography
- 0% = arrests for child molestation or other contact sex offenses
- 92% = successfully completed supervision
- 14% = previously convicted of a contact sex offense
- 1 = average Static-99R score for the 72 person cohort
  - Actuarial table for 99R overestimates CPO recidivism rates
- 3 = average 99R score for 11 CPOs with prior contact offenses
  - 99R overestimates CPO recidivism rates
- 99R results confirm developers' advice to avoid use with CPOs

## Our results parallel Wakeling's

- 1% of her CPOs had high actuarial scores
- 6.7% = sex recidivism rate for Generalist Sex Offenders
- 1.6% = sex recidivism rate for noncontact CPOs

## The Weinstein Memo

- In U.S. v. C.R, Judge Weinstein requested a report on CPOs
- FPO Lawrence Andres prepared one for the EDNY
  - 108 = number of CPOs supervised from 1999 to 2011
  - 20% = disclosed sex crime with a minor victim not on their PSIs
  - Definition of minor victim: Someone under 18
  - 1 = committed a contact sex offense while under supervision
  - 87% = succeeded in not having their supervision revoked
  - Some NY self-report policies were like Bourke & Hernandez

# Data in the Weinstein memo confirmed our results

- The base contact rate over 4 year is .6% ( $1/180 = .6\%$ )
- EDNY CPOs made few new disclosures vs. the Butner CPOs
  - 20% v. 59% = statistically significant
  - Shows how easy it is to manipulate self-report
- Would nonsexual offenders report the same sex offense histories?

## Five major conclusions from our research

- CPOs obtain low scores on Static-99R
- The recorded contact sex offense recidivism rate is Very Low
- About 15% = convicted of a contact offense before pornography
- About 90% = completed probation without being revoked
- Self-report data are susceptible to error

## Implications

- Most CPOs do not meet criteria for Pedophilia, do not have “serious difficulty refraining from sexually violent conduct”
- Attempts to develop actuarials to identify past contact offenses or predict future contact offenses are unlikely to succeed
  - Wakeling = 1.6% rate for lower scores; 0% for higher scores
- CPOs are distinct and unlikely to recidivate

# Recommendations

- Re-integrate CPOs into community sooner rather than later
- Compare a learning theory model with a paraphilia model
- Combat child pornography from a public health perspective as well as a criminological one