

May 17, 2012

The Honorable Patti B. Saris
Chair, United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Saris,

On February 15, 2012, the United States Sentencing Commission (USSC) held a public hearing on the issue of Federal Child Pornography Crimes. The Commission heard testimony from a number of experts on the subject.

Several witnesses made reference to a paper I co-wrote with Dr. Andres Hernandez, a document commonly referred to as the "Butner Study." While some of the information provided to the Commission about our study was accurate, other observations were misleading or simply untrue. I wish to express my sincere appreciation to you and the other members of the Commission for allowing me the opportunity to share some facts that may help clarify these issues.

Our manuscript was intended to be an initial investigation into this area, and our expectation was that any limitations to the study would be addressed by future scientific inquiries. Unfortunately, as we have seen, it is easier to tear down than to build up, and an inordinate amount of attention has been placed on trying to invalidate the study through cocktails of myth, innuendo, and rumor. While there is often much to be gained when critics point out imperfections, let us not forget that science constantly evolves through imperfect studies, and the field of child exploitation is too important to dismiss anything that might inform our efforts to protect children from the scourge of sexual abuse. Our energies would be better spent engaged in replication studies to further our scientific understanding of the relevant issues.

I appreciate the difficult task currently in front of the U.S. Sentencing Commission, and I hope you find this document informative and useful in your endeavor. Thank you again for the opportunity to share additional information about our work. If I can be of further assistance, please do not hesitate to contact me; I am happy to assist.

Sincerely,



Michael L. Bourke, Ph.D.

1. Inmates were removed from treatment if they failed to make disclosures of hands-on victims. As a result, they felt compelled to disclose more victims than was actually the case.

During the eight years I served as a Staff Psychologist at FCI Butner no program participant was ever removed because he did not disclose undetected contact offenses. This is a myth of unknown origin.

I asked Dr. Andres Hernandez if he would like to comment on this persistent rumor. He wrote the following in reply:

“Inmates in the SOTP were encouraged to be honest in their disclosures. There were many inmates in the SOTP for whom their instant offense was their only offense. That was the truth and it was verified through a polygraph examination. . . [N]o one was ever expelled for failing a polygraph or for not making additional disclosures . . .”¹

Fifteen percent of the Butner Redux sample satisfactorily completed the program without ever disclosing a hands-on victim, and other offenders who entered the program with known hands-on victims never disclosed any additional victims.

¹ Personal communication, March 5, 2012

2. Treatment staff at FCI Butner may have *unconsciously* dealt with non-disclosing inmates differently than those who disclosed hands-on victims. They may have “weeded out” less dangerous offenders as a result of this unconscious bias, and as a result their sample ended up being artificially skewed in favor of hands-on offenders.

As a psychologist, when I first heard this suggestion, I was intrigued. I certainly did not believe this occurred, but the very nature of the question pushes my beliefs aside (my bias would have been *unconscious*, after all).

The only way to find out for sure was to run the data, which I did shortly before I left the Bureau of Prisons in 2008. What I found was that the *reverse* occurred. Inmates who claimed to have never acted out against a child were actually *less* likely to be removed from treatment, while those who had hands-on victims were more likely to be expelled or to quit.

I have a theory about why this is the case, but it is likely beyond the scope of this document. I will restrain my comments to merely reporting, with confidence, that there was no “culling” of program participants, conscious or unconscious, to meet some sort of agenda (research or otherwise).

3. The prospect of being expelled from treatment and sent to general population was frightening to program participants.

There are several issues that make this statement highly unlikely.

The statement implies that sex offenders were separated from the General Population (GP) in the first place -- they were not. The offenders slept and received treatment in their own housing unit (each inmate participated in treatment for four hours each day, either in the morning or the afternoon), but otherwise spent their days and evenings on the general compound. Program participants ate in the same cafeteria with GP inmates, labored alongside GP inmates on work details, attended religious services with GP inmates, and participated in intramural sports with their GP counterparts. Thus, the expulsion of an SOTP inmate would merely result in his spending an extra four hours per day in an environment in which he was otherwise already immersed. It is difficult to imagine why sudden harassment would occur during this period, and not during the other 12 hours the inmate was already spending on the compound. Further:

- A. Of the approximately 18,000 sex offenders currently in the custody of the Federal Bureau of Prisons, 99.9% live on General Population units.
- B. Nearly every SOTP inmate lived on at least one GP unit before he was accepted for treatment, and sometimes program participants resided on such units for years. They had learned to adapt to life on these units. Many SOTP inmates had just as many friends on the general compound as they did within the SOTP.
- C. A number of SOTP inmates were actually low-security inmates who had signed a waiver in order to participate in treatment at a medium-security facility (FCI Butner). If these inmates had been expelled they would have been transferred back to a low-security institution -- one with *more* freedoms and privileges, and with *less* violent inmates.

4. After the publication of the study, Dr. Hernandez admitted shortcomings and “backpedaled” from the findings of the paper at a conference.

On pages 154 to 155, Commissioner Howell stated,

“. . . and I think that Dr. Hernandez has himself subsequently, after the Report came out, has also said himself that there are some research methodological issues that raise questions about the reliability of some of the information that he obtained because, not that the inmates in that study were truthful and forthright, or were minimizing, but that in fact quite contrary to what you’ve both said they were exaggerating their prior conduct.”

Response

Dr. Hernandez has never indicated the inmates were exaggerating their prior conduct, and neither he nor I believe this is the case. Further, we are confident there are no methodological issues that raise questions about the reliability of the information we obtained.

After Dr. Hernandez read the statement on pp. 154-155 of the transcript, he wrote me the following response:

“[Commissioner Howell] is mistaken. My statements at the G8 Summit, which are my only public statements on the findings of the Butner Study, warned against the already evident misuse of the findings of the study. My statements, of course, did not disqualify or diminish the findings of our study. I also warned against believing second- and third-hand information, and even judicial opinions (which were based on hearsay and misinformation)².”

² Personal communication, March 5, 2012

5. Reference to a statement by Dr. Abel on page 155 of the transcript.

On page 155, Dr. Abel states:

“. . . The Hernandez Study at Butner has a lot of critiques, and as matter of fact it was originally sent for publication, withdrawn, discussed, sent back, and there’s still criticisms about it.”

Response

By his use of the term “Hernandez Study” it is unclear if Dr. Abel is referring to the document written in 2000 by Dr. Andres Hernandez³ (the original “Butner Study”), or if Dr. Abel is referring to the Bourke and Hernandez (2009) study⁴.

In either case, his statement is inaccurate.

The former document (the original “Butner Study”) was a poster submission at a professional conference (ATSA). It was never submitted for publication.

The latter study (Bourke and Hernandez, 2009) was not, as the statement implies, withdrawn from the Journal of Family Violence. The paper was accepted for publication after peer review but was placed “on hold” when Bureau of Prisons officials expressed an interest in discussing the paper with us before it went to press. Dr. Abel’s statement unfairly and inaccurately insinuates there was something wrong with the study that had to be fixed. This is not the case. Ultimately, no changes were made during that period, and the paper published by the Journal of Family Violence is the original submission.

³ Hernandez, A. (2000, November). *Self-Reported Contact Sexual Offenses by Participants in the Federal Bureau of Prisons’ Sex Offender Treatment Program: Implications for Internet Sex Offenders*. San Diego, CA: Poster presentation presented at the 19th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers.

⁴ Bourke, M. L. & Hernandez, A. E. (2009). *The ‘Butner Study’ Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders*. Journal of Family Violence, 24, 183-191.

6. Reference to a statement by Dr. Abel on page 156 of the transcript.

On page 156, Commissioner Howell asks Dr. Abel if he thinks more credence should be given to the “Butner Redux” statistics since the inmates are in treatment and thus might be “making more forthright comments.” Dr. Abel responds:

“ . . . Well if you don’t participate in that program, you’re out of the program. So it’s a very select group.”

Response

By his use of the word “participate,” Dr. Abel seems to be referring to the rumor that we removed inmates from treatment who did not disclose hands-on victims. If this is what Dr. Abel meant, his statement is inaccurate.

7. Reference to a statement by Dr. Wollert on page 192 of the transcript.

On page 192, Dr. Wollert states:

“. . . One troubling feature was that the welfare of Hernandez’s subjects was dependent on their standing in the program.”

Response

This statement is a mischaracterization of the facts. Inmates’ welfare was in no way dependent on their standing in the program. The welfare of inmates is one of the primary concerns of BOP staff, and measures are regularly taken to ensure their health, safety, and well-being.

8. Reference to a statement by Dr. Wollert on page 193 of the transcript.

On page 193, Dr. Wollert states:

“Another problem was that Hernandez could define a ‘sex offense’ any way he wanted. He could even count a dating relationship between a college freshman and a high school junior as an offense.”

Response

Dr. Hernandez did not create or provide any definitions of offenses. Offenses were defined by federal and state statutory definitions of criminal conduct. He notes:

“I defined sexual offenses within the legal parameters governing the offense at the time and the jurisdiction in which they took place. Therefore, the definition of what constituted a sexual offense was conservative and consistent with local legal standards⁵.”

So-called “Romeo and Juliet” scenarios, such as the dating relationship Dr. Wollert describes, were never considered offenses unless treatment staff were provided information that indicated a crime had taken place. For example, if the offender informed staff that after Juliet rebuffed his sexual advances he placed Rohypnol in her drink and waited until she passed out, then indeed Romeo sexually assaulted Juliet, regardless of their two-year age difference.

It is important to note that staff and offenders thoroughly discussed the inmates’ sexual histories. This process was not one-sided; there were times when offenders were advised to take someone off their Victim List, just as there were times when the activity described by the inmate was determined to be criminal and he was advised to add an individual to the Victim List.

⁵ Personal communication, March 5, 2012

9. Reference to page 193 of the transcript

On page 193, Dr. Wollert states:

“It was also. . . impossible to verify the accuracy of reports, because [child pornography offenders] were told not to identify their victims.”

Response

Dr. Wollert appears to be suggesting that either a) we should have asked the inmates to identify their victims so we might corroborate their claims; or b) we should not “count” unidentified victims.

The notion that psychologists should “verify the accuracy” of client reports in this manner is contrary to accepted standards of professional practice. As treatment providers, obtaining such information would have instantaneously activated mandatory reporting laws and likely would have resulted in the filing of additional charges against the inmates. Placing the ethical issues aside for a moment, it is certain that becoming investigators (rather than therapists) would have resulted in the immediate withdrawal from treatment of nearly all SOTP program participants. The inmates in the SOTP participated in treatment only because they could be honest about what they had done without fears of self-incrimination.

Sufficient confirmation of self-disclosures was achieved via polygraph examination. Our efforts to ensure that offender self-reports were as accurate as possible were much more comprehensive than the methods used by the majority of extant studies in the field.

10. Reference to a statement by Dr. Wollert on page 193 of the transcript

On page 193, Dr. Wollert states:

“Finally, we were told that staff members expected each program participant to add to his list of disclosed offenses as he progressed through treatment, and completed polygraph exams.”

Response

In the field of sex offender treatment, providers typically find that offenders do not fully disclose their entire sexual offense histories right away. It is quite common for offenders to be embarrassed about some of the more unusual sexual experimentation they have practiced, and such disclosures occur only when they feel sufficiently confident that their revelations will not be judged or mocked by the other members of their therapy group. Still other offenses, including hands-on offenses, are suppressed not because of embarrassment and fears of being laughed at, but because of pronounced shame. Such crimes are very difficult for offenders to discuss, as the disclosures bring up feelings of self-loathing and extreme guilt. Offenders must find the courage to counteract the temptation to just “shut it away and forget about it.”

Anyone who has participated in psychotherapy, either as a therapist or as a client, understands that working through issues can be a slow and painful process. Growth is gradual, and self-insight similarly develops over time. Thus, SOTP program participants were asked to record any changes to their sexual history that occurred during their treatment period.

So the answer to the question of whether program participants were *expected* to disclose offenses as they progressed through treatment is “absolutely,” if such offenses were the truth. Since the standard within the program was honesty, however, staff had little interest in disclosures that were not the truth. As Dr. Hernandez noted:

“Program participation has never been contingent upon additional disclosures of sex offenses. In fact, in the last 15+ years as the clinical supervisor of the SOTP and CTP [Commitment and Treatment Program], I have never expelled or threatened to expel any inmate from treatment for not making additional disclosures or failing a polygraph exam⁶”.

⁶ Personal communication, March 5, 2012

I should note another inaccuracy in Dr. Wollert's testimony -- there were no polygraph *exams* (plural). Each inmate received only one examination, and this examination was administered just prior to his release. My expectations as a polygraph examiner and my expectations as therapist were consistent -- the inmate needed to be honest on the test. If the inmate passed the examination, there obviously was no expectation for him to "add" to his list of disclosed offenses. If deception was indicated, he was expected to reveal what he had been deceptive about. Sometimes this had to do with additional hands-on offenses, but many times it did not (one of the most common things inmates chose to keep hidden until the eleventh hour, usually because of embarrassment, was minor sexual contact they had engaged in with animals).

As a reminder, some inmates, such as the 15% described in the "Butner Redux," completed treatment without disclosing *any* hands-on victims. Others who came into treatment with known victims never disclosed any additional victims.

11. Reference to a statement by Dr. Wollert on pages 193-194 of the transcript

On pages 193-194, Dr. Wollert states:

“Now it is well known in psychology that in experiments subjects will act the way a researcher wants them to act, if they know what the researcher wants. Aspects of the research situation that tip subjects off to these hopes are called ‘demand characteristics’. . . we concluded that almost any offender faced with the pressure built into the Butner Program would generate many possible false disclosures.”

Response

First, no such “pressure” existed - this is a myth, perhaps created in an attempt to indirectly invalidate the findings of the “Butner Redux.” Program participants were encouraged to be nothing more or less than honest. There were no consequences if an offender indicated he had never committed a hands-on crime, and approximately 20% of program participants successfully completed the program without disclosing additional hands-on offenses (15% who left the program with no hands-on offenses, and approximately 5% who entered with at least one known hands-on victim but did not disclose any others).

Second, Dr. Wollert’s assertion is dependent on his incorrect assumption that we first came up with the idea to write the “Butner Redux” and then began collecting data. In fact, we did not conduct research with offenders who were actively receiving treatment and the assessment protocol was not modified to accommodate the interests of research. Our research was conducted with archival records extracted from clinical charts; these charts had been generated over the normal course of treatment. In other words, the information had been collected *before* we came up with the idea to conduct the study.

12. Why do the disclosure rates between studies vary?

Sex offenders have extraordinary difficulty disclosing their entire sexual offense histories⁷. There are strong moral and legal consequences from admitting additional sexually deviant acts, and these serve as significant deterrents to honesty. For this reason, the most accurate data often can only be obtained from clinical programs that utilize a supportive-confrontational model that challenges distortions, supports offenders as they struggle with the implications of their acts, and encourages complete honesty. This process takes time. Offender disclosures during a jail intake interview, for example, are likely to be quite incomplete; the offender may be anxious or afraid, and often will be in a state of denial. In my experience it can take many months of psychotherapy before some offenders are “ready” to discuss secrets they have shamefully hidden away, in some cases for decades.

Unfortunately, research in the area of criminality is fraught with over-reliance on official records (e.g., arrest records, re-conviction statistics). These statistics are appropriate for studies that examine *re-convictions*, but should not be used as a “proxy” for *reoffense*. This is especially true when base rates for detecting the crime are low, such as for sexual crimes. Official records do not provide “a conservative estimate of actual offending” (Seto, et al., 2010, p. 136); they are downright horrible estimates.

Despite the dangers, researchers regularly extrapolate and generalize from official records. For example, offenders are placed into study groups (e.g., “child pornography offender,” “hands-on offender”) based on criminal history. There is no criminological precedent for the assumption that an offender arrested for a certain crime has not committed others in different criminal categories. Moreover, criminals are almost never arrested the very first time they commit a crime. Using an arrest history or, worse, a conviction history to label an offender would make Al Capone a simple “tax evader.”

For obvious reasons, from the time of his arrest until his sentencing, an offender is likely to remain closed-mouthed about undetected hands-on offenses. Once he is tried, convicted, and sentenced, however, he may desire treatment to ensure he never again reoffends. Dr. Abel’s testimony speaks to this process:

“When we see child molesters through the door, they've cleared the criminal justice system mostly. It's a completely different animal. They are surprisingly forthcoming. It isn't because we have sparkling insight, or wonderful personalities, it's that we're in a different system and we are trying to help them block, stop, and never do this again.

⁷ Maletsky (1996); Marshall (1994); O’Donohue & Letourneau (1993); Shlank & Shaw (1996); Winn (1996)

Whereas, up to the point that they are convicted, it's an entirely different thing.” (Page 148, lines 9-18).

One of the most important reasons estimates vary between studies is due to differences in the quality of measurement. This study was conducted from records collected by the professional staff from a well-regarded residential treatment program, a unique environment in which offenders felt safe enough to disclose embarrassing, morally abhorrent, undetected criminal behavior. The SOTP was specifically designed to help the offenders change their lives and was predicated on honesty; we simply recorded what was known about these men before sentencing and then reported what they disclosed during treatment. Further, the program utilized the polygraph to confirm the sexual history of program participants.

13. Why did the Butner program have such high disclosure rates? Should it be considered an outlier?

The percentage of “child pornography offenders” in our sample who disclosed hands-on victims was 85%. In Seto, Hanson, and Babchishin’s (2010) meta-analysis, this finding was characterized as an “outlier.”

The term “outlier” describes a data point that significantly departs from other data points under investigation. While such findings should serve as catalysts to spark further intellectual inquiry, among non-researchers the term tends to carry an implication that something was wrong with a study; that the findings were spurious or perhaps flawed in some way. If misapplied, the label can harm further scientific inquiry because the study may then be excluded from subsequent analyses, thus clouding our understanding of the issue.

“How can the term be misapplied?” one might ask. “Isn’t this simply a matter of ‘doing the math?’” Put another way, “When is an outlier not an outlier?” The answer is that if the math is correct but the results are not interpreted within an appropriate theoretical framework, the results can be misleading.

In the meta-analysis by Seto, et al. (2010) the authors observe that certain studies seem to group together. They note that “lower prevalence rates tend to be obtained in samples of arrested suspects” with “somewhat higher estimates for correctional or criminal justice samples,” and “the highest estimates for clinically referred samples.” (p. 125). They theorize that this trend is “probably the result of contact offense history having an effect on whether someone is incarcerated and a larger effect on being referred for assessment or treatment.” (p. 125).

This hypothesis, while reasonable at first glance, is unsupported. For example, a closer examination of the studies used in the meta-analysis shows that one of the samples with a higher rate of hands-on disclosures (Neutze, Seto, Schaefer, Mundt & Beier, 2011) was not a “correctional or criminal justice sample.” In fact, this study group was obtained from community self-referrals, and none of the men in the study were involved with the criminal justice system. Another “correctional” sample (Quayle & Taylor, 2003) consisted of 11 individuals who were only asked about contact offenses they committed during the period they downloaded child pornography. Finally, having a contact offense history did not affect referral for treatment at FCI Butner, the only sample in the meta-analysis where participants were involved in a formal treatment program.

An alternative theoretical framework to explain why certain studies grouped together, and the explanation this writer believes is significantly more accurate, is based on four hypotheses:

- 1) Official records drastically underestimate hands-on offending because the base rates for detecting hands-on offending are extremely low. Also, sex offenders at this stage of the criminal justice system do not spontaneously reveal undetected acts of deviant criminality. Thus, studies that use only “official records” will find that a fairly low percentage of Internet offenders have previous convictions for hands-on abuse.
- 2) The only way to discover the acts an offender has committed but has buried in the bowels of secrecy (short of a victim coming forward) is to ask him. Since interviewing an offender is an important step in obtaining a complete and accurate sexual offense history, studies that use some form of interviewing will find a greater percentage of offenders with histories of child molestation (those with detected offenses plus those who self-disclosed undetected acts).
- 3) Due to shame and fear of legal consequences, some offenders who are interviewed may lie about their past criminal behavior, or may provide only partial admissions. Obtaining a *complete* and *honest* accounting of offenses takes time and requires trust. Offenders who have expressed an interest in changing their lives and who have had the courage to enter a treatment program are more likely to “be in a place” to provide a comprehensive accounting of their true offense history. Thus, the sexual histories of offenders who have gone through intensive treatment programs are likely to include an even greater number of disclosures than the histories of those inmates who are not in such a treatment program, those who are assessed in a screening environment, or those who are in the initial stages of treatment.
- 4) Offenders undergoing polygraph examination are more likely to divulge crimes from their past that they otherwise would have kept hidden. Thus, sexual histories that are obtained following polygraph examination are likely to be more accurate than those obtained prior to such examination.

Based on this theoretical continuum, the high disclosure rate obtained in the Butner Redux sample is not attributable to coercion, or demand characteristics, or sampling problems, or methodological issues, or selection biases, or any other rumor that has been created to “account for” the findings. Perhaps the answer will not be found in what the folks at Butner did wrong, but what we did right.

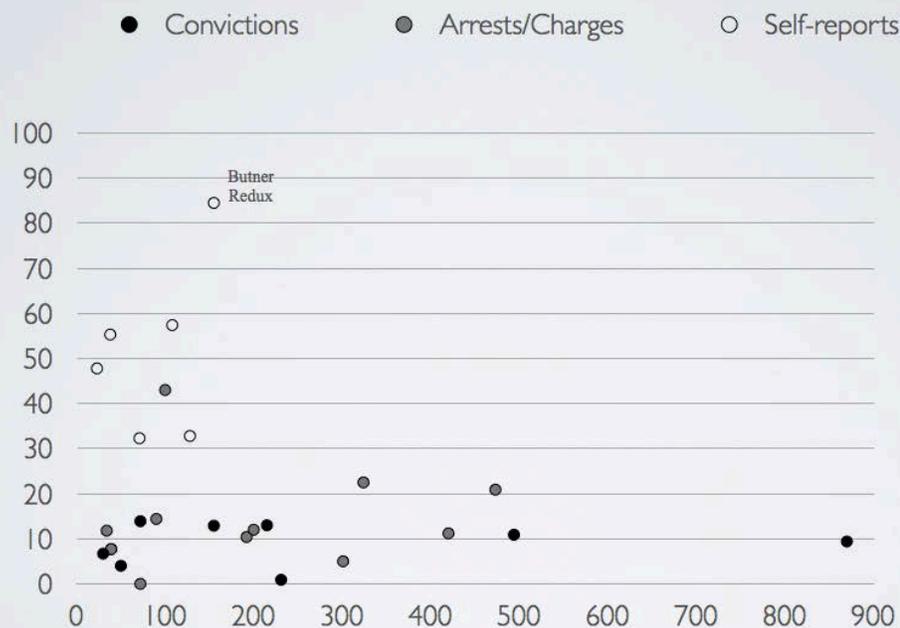
For example, is it important that clinicians at FCI Butner had access to a vast amount of information on the offenders? If one looks at the studies in the Seto meta-analysis, we find that in most studies the researchers had access to only one information source. In contrast, we had all the information from official records, plus information that had been used at trial and sentencing (e.g., victim statements, transcripts), plus the comprehensive biographical reports written for judges before sentencing (PSIRs). Then we had data obtained from physiological testing (i.e., the penile plethysmograph) as well as information the offender revealed in 18 months of psychotherapy and, in some cases, psychophysiological testing (i.e., polygraph).

Also, we didn't see the offenders for one 90-minute group session each week, as is common in outpatient settings. We interacted and worked with these men for four hours each day, five days per week. At any given time we dedicated nine full-time treatment staff, including five doctoral-level clinical psychologists, to the treatment of 108 men. We spent a significant amount of time getting to know them, and contrary to how we are often portrayed, we were not "out to get" any of them. We were deeply committed to the success of each of these men.

Conceptually speaking, then, it is inappropriate to compare the "Butner Redux" to the studies that used data from official records. It is also inappropriate to compare it to studies that use self-report, if those studies involved inmates agreeing to be interviewed in prison by someone they had not previously met.

Below are the studies used by Seto and his colleagues in their 2010 meta-analysis, with the results plotted on a graph that puts sample size on the X axis (appropriate when conducting a meta-analysis), and disclosures on the Y axis. I have taken the liberty of labeling the point representing the "Butner Redux."

Studies As Organized In Seto (2010) (by Sample Size)



The way this is plotted, the Butner Study sure *looks* like an outlier! But recall that most of the dots (all the darker ones, in fact) are based on official records which, according to research, are significant underestimates.

Now I will apply theory to the math by organizing the studies according to how the data were collected.

I am combining the studies that rely on “charges,” those that used “re-arrests,” and those that used “re-convictions,” since, according to our theory, all these studies are simply using some form of “official records.” An examination of one study (Seto, 2006) whose sample had been described as “charged” was actually comprised of Internet offenders who, after being charged, had been screened, found to be high risk, and referred for treatment. Because it used a screening process and was a sample identified on the basis of risk, on our conceptual continuum this study is not well-suited among the other

“official records” studies. Consequently, it will not be included in the graph below⁸, which is what we find when the “official records” studies are plotted:

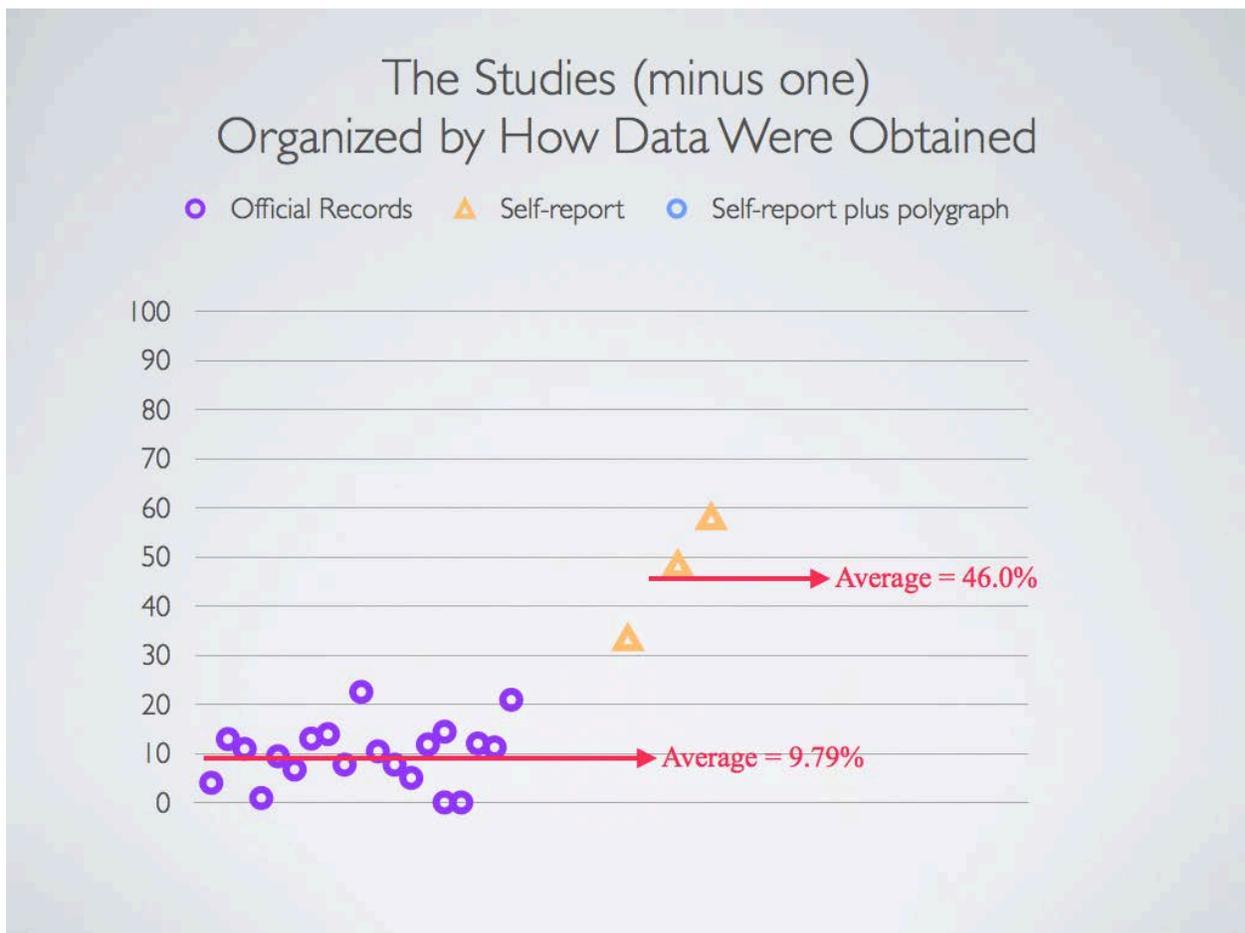


So far, this result is precisely as hypothesized. Some child pornography offenders have been arrested previously for hands-on offenses, but many have not. The average is about 10%.

This graph is dangerous, however. In the hands of someone who does not know any better it can send the wrong message. It can even prompt a “subject-matter expert” to raise his or her right hand in court and opine that the Internet offender about to be sentenced is a “low risk” to society. “After all,” the testimony would indicate, “statistics show that only 10% of men arrested for child pornography offenses have sexually molested a child.”

⁸ The exclusion of the study does not significantly change the average; with the study included it’s 11.37%.

This would be an irresponsible interpretation of the data. It would be similar, in effect, to opining that a small minority of teenaged boys have looked at an adult magazine based on the fact that only 10% are ever caught doing so. A true accounting of any act conducted in secrecy, and that has a low rate of detection, is known only by the subject (and perhaps, in the case of interpersonal crime, by the victim). This brings us to the second type of study -- those in which the offender was interviewed outside a treatment or polygraph context. There are three such studies in Seto, et al. (2010) that meet this definition. When plotted, the graph looks like this:



This result is interesting, because again the data points are where we would guess they would be, based on our theory. The orange triangles representing studies that used self-report statistics are significantly higher than the purple circles representing studies that relied only on re-arrest or re-conviction records; in fact, the average jumps to nearly half (46.0%).

So is the subject-matter expert now justified in raising his or her right hand and testifying that “Studies show that about half of Internet sexual offenders studied have sexually touched children?” No, because these three studies, while they used self-report, would not be characterized as “the most comprehensive assessment of veracity.” For example, in one of these studies, which consisted of only 11 participants, incarcerated offenders agreed to speak with an interviewer for two hours. There is no indication the offenders were in treatment, nor even that they had previously met the interviewer. Further, no polygraph was conducted, and there is no indication that official records were reviewed. Another study used a sample of men who self-referred from the community; again, the interviewers were previously unknown to the offenders, no polygraph was used, and no official records were available for review. The sample in the third study consisted of both incarcerated and community offenders who were being screened at a Department of Corrections center. Some had previously received treatment, some had not.

According to the theory we are employing, the more comprehensive the assessment process, the more disclosures will be obtained. The final set of studies, then, should include those in which offenders were encouraged to be honest but that also utilized some sort of mechanism for testing the veracity of disclosures. This could be an intensive treatment program, or simply an interview combined with a specific-issue polygraph that addresses hands-on offending.

There are two data points that fit this category from Seto, et al. (2010), and for the sake of illustration this writer is adding three additional sources. The as-yet unpublished data were collected by federal Special Agents investigating men for child pornography-related crimes who had no known hands-on offenses. The investigators interviewed and conducted polygraph examinations with the suspects to ascertain if they had committed undetected hands-on offenses. To date, agents in one city have obtained a confession rate of 80%; in another city, 69%; and in a third city, approximately 76%.

The Studies (plus three) Organized by How Data Were Obtained



As predicted, assessing disclosures within an intensive treatment environment, or in a context where polygraph is used, results in even more revelations by offenders.

Thus, based on this theoretical framework for understanding statistical data, the “Butner Redux” is not an outlier. The SOTP staff at Butner had access to significantly more sources of information than other researchers, and we spent considerable time with the subjects, building rapport and trust and working with them in a residential therapeutic environment. Finally, we employed polygraph examination. In short, our study, as plotted above, is exactly where we would expect it to be.

14: The study had a “selection bias” because participants in the study were not “typical” federal child pornography offenders. They were chosen for treatment in the Butner sex offender program based on the aggravated nature of their offenses and/or their admitted need for treatment for their severe sexual disorders. Thus, the percentage of such inmates with a contact offense history was likely higher than the percentage of all federal child pornography offenders with a contact offense history.

Response:

On page 174 of the transcript Dr. Seto stated:

“My understanding is that at the time the Butner sex offender treatment program was the only treatment program available for child pornography offenders in the federal system, and so there might have been some selection effect going on, that people were purposely sent to Butner because there was this treatment program there, and perhaps that selection was associated with their perceived risk.”

The first part of this statement is accurate; the remainder is not. At the time the study was conducted, the Sex Offender Treatment Program at FCI Butner was the only formal sex offender treatment program within the Federal Bureau of Prisons. For this reason, it is occasionally presumed that we must have admitted the “worst of the worst” (or at least, as Dr. Seto hypothesized, those whom we felt were at greatest risk for reoffense). This presumption, while logical, is inaccurate. Program participants were not accepted into the treatment program based on the egregiousness of their instant offense, the “seriousness” of their criminal history, the severity of their sexual disorder, or on the basis of any formal or informal risk assessment. Further, the presence or absence of known hands-on victims was not considered.

In the federal prison system, treatment -- including sex offender treatment -- is voluntary. Thus, no inmates were *sent* to the Butner treatment program -- all volunteered. The primary criterion for admittance was time remaining on an offender’s sentence. When a treatment bed opened up, referred inmates who had between 19 and 23 months remaining on their sentence were contacted to ensure they were still interested in participating (some invariably changed their mind after the referral was made).

While no selection biases of the type suggested on page 174 were present, it brings up a valid question; that is, whether the inmates who participated in the SOTP differ in some ways from offenders who did not volunteer for treatment. This question can be reasonably posed with any study sample, and is certainly not something specific to our study (note that all the self-report studies identified by Seto, et al. (2010) were comprised

of volunteers). While there is no evidence to indicate such differences existed, I acknowledge it is entirely possible.

What I find interesting about this point is that nearly all the critics who bring it up assume that such differences, if they exist, would indicate the Butner offenders are *more* dangerous than their “average” sex offender counterparts. It is worth noting that the reverse may be true. Consider for a moment the types of individuals who refuse psychological treatment. Some, such as many domestic abusers, believe their behavior is justified and warranted. Others, including substance abusers, fail to recognize they have a problem. Should we assume that the individuals who do not see the need for treatment are less likely to be engaging in the behavior than those who seek help?

The issue is no different with sexual offenders. Entrenched pedophiles often do not feel their behavior is wrong -- their behavior is *ego-syntonic* -- and thus they are unlikely to feel they need treatment. Should we presume that men who refuse to place child abuse in the “harmful and wrong” category of behavior, and who in fact view such acts as loving and nurturing, have fewer victims than the inmates who hate their predilections, who fight their deviant urges, and who, upon entering prison, immediately seek help? Along a similar vein, since we did not accept psychopathic sex offenders to the program, is it wise to assume that men who lack a conscience but have antisocial traits in abundance are less likely to commit hands-on offenses than offenders who possess at least some moral inhibitions?

In summary, with the exception of psychopathy, I do not know whether the inmates in the Butner Redux sample differed from other sex offenders incarcerated in the BOP at the time. While it may be true that the Butner inmates possessed some factor that made them more likely to have hands-on victims than “typical” inmates, we should be careful about making this assumption until additional information can be obtained to confirm or reject this hypothesis. I can say with certainty that if such differences exist, they were not due to selection biases – the primary criterion for admission was *time remaining on their sentence*.

15a: The Butner Study is methodologically flawed.

The sample used in the original “Butner Study” (Hernandez, 2000) consisted of offenders whose sexual offense involved the Internet. This group included not only offenders who received, possessed, or distributed child pornography, but also “travelers,” men who engaged in interstate travel to engage in sexual activity with a minor (or someone they believed was a minor).

At the time we began working on the “Butner Redux” (Bourke & Hernandez, 2009) there was greater conceptual clarity in the field about online offending, and we chose to focus specifically on offenders who downloaded and traded child pornography.

Because the subject composition differs, we suggest individuals avoid referring to the “Butner Studies” in a collective manner.

15b: So is the “Butner Redux” methodologically flawed?

The methodological limitations in this study are comparable to those found in other research in the field, and the “Butner Redux” has significant strengths compared with extant studies. For example, by using the files of *all* program participants within a discrete three-year period we drew on the “universe” of SOTP participants. This procedure eliminates the potential of any selection bias and is often preferred over random sampling.

Other strengths of the study include the fact our sample size is healthy, and that more care was given to measurement than in any prior study. Further, program participants were “protected” from self-incrimination because we did not ask them to disclose identifying information about their victims; this allowed them to be honest without fear of legal consequences.

15c. What do you mean, “more care was given to measurement”?

At FCI Butner we had access to a wealth of information on each program participant. An inmate file typically contained copies of the following:

- 1) the inmate’s Presentence Investigation Report;
- 2) police arrest reports;
- 3) psychological evaluations (including psychosexual evaluations) and treatment discharge summaries;

- 4) results from penile plethysmograph;
- 5) results from psychological testing;
- 6) actuarial risk assessment measures;
- 7) victim statements;
- 8) information gleaned from collateral sources, including interviews with family members;
- 9) information obtained during polygraph examination, which assessed both *over-reporting* as well as *under-reporting*;
- 10) clinical notes from months of individual psychotherapy, group psychotherapy, and psychoeducational courses;
- 11) Letters, drawings, and other information confiscated from his cell or property;
- 12) Information disclosed as a result of considerable rapport between therapists and program participant (the ratio of staff to inmate was nearly 1:10, and staff worked from offices and treatment rooms on the housing unit. We spent eight hours per day, five days per week, with approximately 100 program participants. Treatment periods averaged 18 months in length).

In contrast, the information typically available to academic researchers consists of:

- 1) Surveys
- 2) Official records (e.g., conviction rates)

15d: So why do I keep hearing that the “Butner Redux” is flawed because of its sampling procedures?

Offenders in the Butner program volunteered for treatment, which makes the study group a *convenience* sample. Such samples are less ideal than *randomized* sampling (the “gold standard” in a perfect world), but by no means is this a flaw. In fact, convenience sampling is the most common form of sampling in the social sciences⁹.

⁹ Fortune & Reid (1999)

16. How do you know the Butner inmates did not over-report to “look good” in treatment?

1. The SOTP emphasized integrity, honesty and accountability as core principles, and program participants were encouraged to discuss anything in their past that related to their criminal offending. If an inmate committed hands-on offenses in his past, he was expected to disclose those offenses. If he did not have hands-on offenses, he would be expected to be honest about his child pornography collection, or his voyeurism, or his exhibitionism, or whatever his crime(s) were. Program participants did not “look good in treatment” for making any particular type of disclosure, and treatment providers do not look more admiringly upon patients who report a litany of symptoms compared to patients who have fewer. The key is honesty (quality), not quantity.
2. The sexual history of each program participant was described in a “Discharge Summary,” a comprehensive report provided to the offender’s Supervision Officer just prior to his release from custody. This report was one factor used by probation and parole officers to determine his level of risk and need for additional treatment. Thus, any information disclosed by the offender during treatment could be used to add Special Conditions to his supervision requirements. In other words, even if the offender felt he would “look good” in treatment, the desire to “look good” would have to be weighed against the knowledge these crimes could result in more strict supervision requirements for years following release.
3. A related criticism we have heard suggests the SOTP inmates may have provided disclosures to look good for the “Parole Board.” Although the Sentencing Commission is aware, other readers of this document may not realize that the federal prison system has not had parole for decades, and thus this incentive did not exist.
4. All program participants who entered the SOTP after 2002 were subject to polygraph examination. While the theory underlying psychophysiological detection of deception (i.e., polygraph) is beyond the scope of this document, suffice it to say the instrument does not “know” whether something is untrue because it is an exaggeration, a minimization, a partial truth, a lie of omission, or a twist of fact. It simply detects that the individual is not being truthful. In other words, inmates were polygraphed for over-disclosures as well as under-disclosures.
5. Fifteen percent of the Butner Redux sample satisfactorily completed the program without ever disclosing a hands-on victim. How they managed to not only progress through treatment but satisfactorily complete the program is not adequately accounted for in the argument posed.

17. There is an odd rumor that the authors of the “Butner Redux” paid the Journal of Family Violence to publish the article, or that the authors selected their own reviewers. Is there any truth to these statements?

None whatsoever. The Journal of Family Violence is a reputable, peer-reviewed journal that accepts manuscripts based on academic merit. We did not pay to have the article published, and we did not know the identity of the professionals who reviewed our manuscript.