OUTLINE BY
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Since the panelists did not compare notes before submitting outlines, I thought I would deal primarily with my experiences in the District of South Dakota involving child pornography and other sex crimes. We have 9 Indian reservations in South Dakota and we are a non-public law 280 state which means that serious reservation crimes come to federal court. We have a substantial number of contact sex offenses against children. The off-the-reservation sex offenses are mainly child pornography cases. We have had, probably like most courts because of the Project Safe Children Program, a significant increase in child pornography cases with, for example, 19 on my docket at this time.

It is our experience in our District that in our child sexual abuse cases the sentencing guidelines are usually appropriate. There are also child victims in each child pornography case, but the level of victimization usually seems to be different. Usually our child sexual abuse cases involve a family member or someone else living in the home, and the abuse is usually repeated instances although the offender is often being convicted of a sexual offense for the first time. By comparison, "There is scant research on the criminal histories and later offending of child pornography offenders. Research data reveal that child pornography offenders with prior criminal records are significantly more likely to offend in various ways (general, violent, sexual)." Dr. John Fabian, *"To Catch a Predator, and Then Commit Him for Life, Sexual Offender Risk Assessment,"* The Champion, Vol. XXXIII, No. 2, March 2009, pp. 32-44 at 41.

We have also seen anomalies in the application of federal child pornography law. For example, under South Dakota law, the age of consent for sexual contact is 16. SDCL 22-22-7. By comparison, the sending of a sexually suggestive picture over state lines can be an offense if the person pictured is 17. That is not to say that the age of consent by state law is the correct age, but only to note the effect.

On issues of proof, we have normally had physician witnesses, where age is a contested issue, provide testimony on the age of the victim in the images. Prosecution in a recent sentencing tried to admit contested evidence on age through a local investigator and that was refused.

Defense counsel are contesting other information concerning other illegal sexual activity in pre-sentence reports because of concern over the civil commitment program established by Title III, Section 302, of the Adam Walsh Act. 72 Fed.Reg. at 43207. The Act provides that when considering the definition of a sexually dangerous person for purposes of considering civil commitment "it is not necessary that a person have been charged with or convicted of any criminal act related to the conduct being considered." As a result, there appears to be no limitation on what information may be considered nor is there any limitation on the quality of such information. Part of the continuing concern comes from limited knowledge of how the civil commitment aspect of the Adam Walsh Act is being implemented. An excellent article that should be considered by anyone involved with a defense who might be subject to civil commitment under the Adam Walsh Act is the previously cited Dr. John Fabian's "*To Catch a Predator, and Then Commit Him for Life: Sex Offender Risk Assessment.*" The first part of the article appeared in The Champion in February, 2009 and dealt primarily with the legal constructs of the Adam Walsh Act, with particular emphasis

on the civil commitment of sexually dangerous persons. The second part of the article in the March, 2009 issue has a clinical focus on sexual offender risk assessment in civil commitment in state and potentially in federal court. Another aspect of note in the Adam Walsh Act is that it appears that prosecutors in some instances are changing around the Adam Walsh Act by sometimes not alleging age in the Indictment. The reason appears to be that if they allege age, then given the punishment under Adam Walsh, virtually all cases would go to trial when it is sometimes desirable for a victim to not have to go through a sexual abuse trial and for there to be an admission of guilt by the offender. Victims are fairly often not believed or supported by the family unit that often includes the defendant, so a plea acknowledging guilt is most helpful to the victim.

There is no question about a cycle of abuse that gets manifested in our sexual abuse cases. The victims in turn offend and the cycle goes on. For a recognition and discussion of the problems presented, see U.S. v. Miner, 131 F.3d 1271, 1274-5 (8th Cir. 1997). "Over the last ten years at least forty convictions for sexual abuse of children or young adults, involving Native Americans, in the United States District Court for the District of South Dakota have been appealed to this court. [footnote to cases omitted] Of that number, at least twenty-five represented instances in which children or young adults were abused by a father or another family member." And the sexual abuse continues, Hubbeling v. U.S., 288 F.3d 363, 368 (8th Cir. 2002), (Judge Haney concurring and citing twenty-two subsequent appeals from sexual abuse cases in the District of South Dakota.)

A sub-part of sex offender cases are the juvenile sex offenders. The peculiar problems of that group of offenders is explored in *"Juvenile Sex Offenders and Sex Offender Registration: Unintended Consequences."* Calley, Federal Probation, December, 2008, pp. 37-41. In South

Dakota we happen to have quite good avenues of treatment for juvenile sex offenders. It is my understanding that this is not so in some other jurisdictions, in part because of the distances from home that youthful sex offenders have to be sent for appropriate treatment. A related development in cases impacting juveniles is the increase in child abuse and neglect cases in federal court. Section 215 of the Adam Walsh Act addressed the abuse and neglect of Indian children. However, after the Act, 18 U.S.C. § 1153 had to be amended by inserting "felony child abuse or neglect." Funding was subsequently approved for 40 Assistant United States Attorneys across the country for this work and our District has one of those additional positions.