



Sentencing Mitigation Strategies in Child Pornography and Sexual Assault Cases

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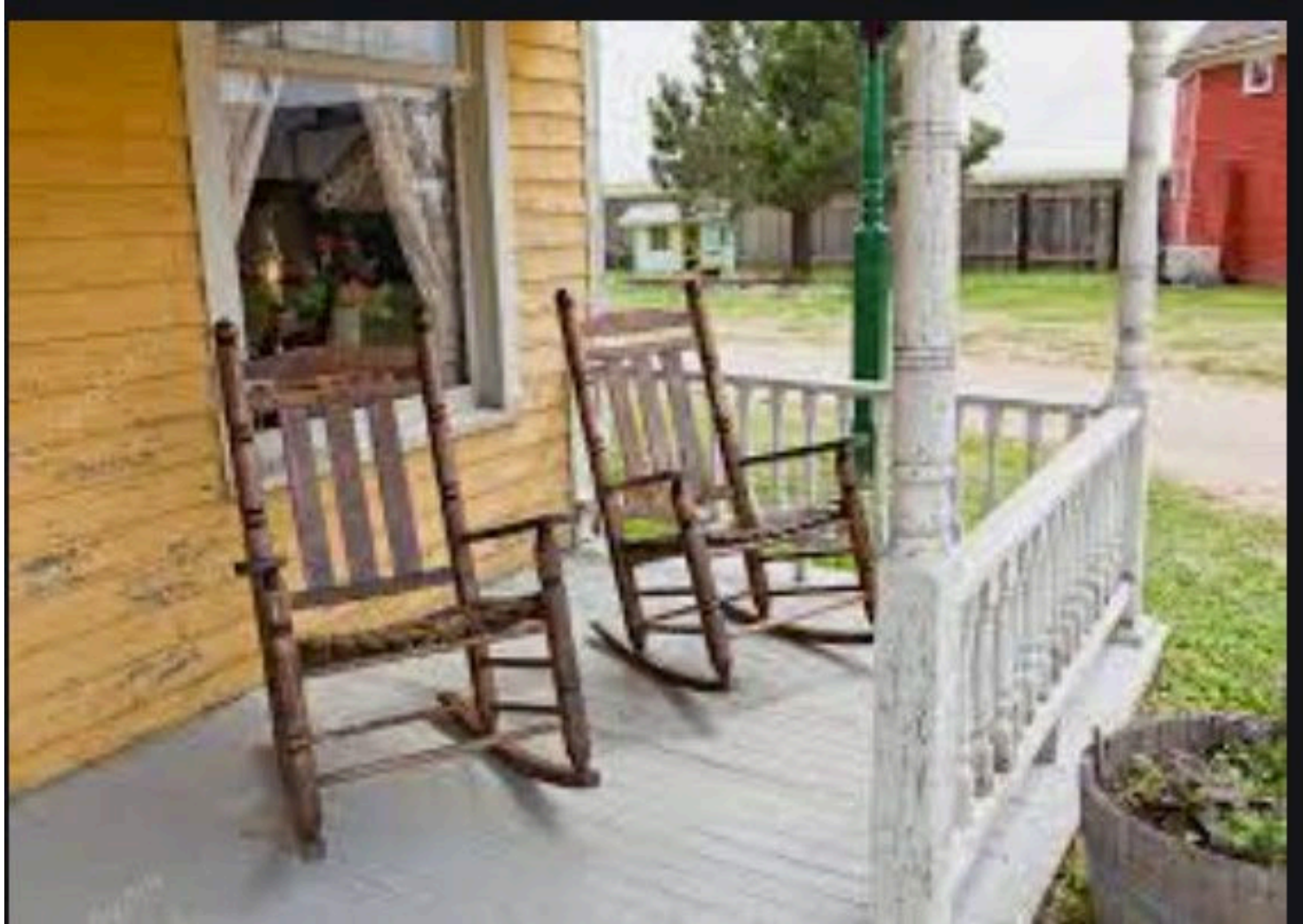


18 U.S.C. § 2251(a) and (e)
15 to 30 years incarceration

Get comfortable with being uncomfortable



Rock with your Client: Client Centered Representation



Very Suspect of Previous Defense Lawyer

- “There is no defense!”
 - “You have to plead to the 2 counts of production and the government will dismiss the other charge.”
 - “The plea offer is 30 years. You should take the 30 years and start serving the sentence immediately.”
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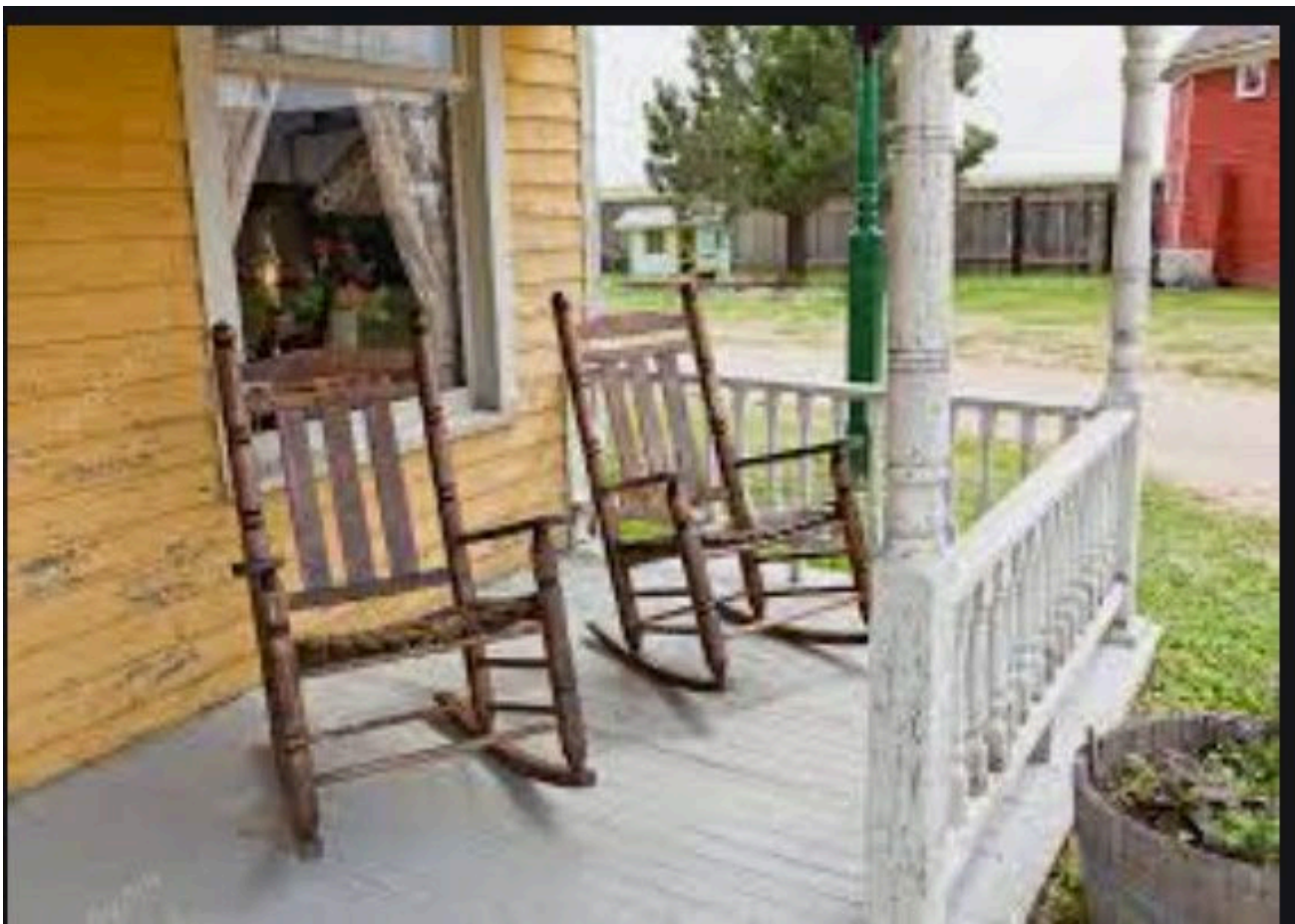
Duty as Lawyer





Dignity and
Respect:
Honor human
Rights

It is going to take some rocking....



CLIENT INTERVIEW FOR BAIL

Name: _____ Case No: _____

Considerations for Release Argument

Offense(s) charged: _____

VRA: ☐ Yes ☐ No **Mandatory Protection Order:** ☐ Yes ☐ NoHolds: ☐ None ☐ Parole ☐ Probation: Felony ☐ Probation: Misd. ☐ ICECurrently on bond for pending matter(s)? ☐ Yes ☐ NoCPAT Score: _____ PR eligible per pretrial bond report? ☐ Yes ☐ No**CRITERIA:**

A. Employment status, history of accused: _____

B. Nature and Extent of family relationships: _____

C. Past and Present Relationships: _____

D. Past and Present Residences: _____

E. Current and former mental health treatment (diagnosis; treatment; medications; dosage): _____

F. Current and former drug/alcohol treatment: _____

G. Who will agree to assist accused to appear? Information re: that person: _____

I. Prior Criminal History and FTAs: _____

_____J. Possible/probable sentence if convicted (i.e. will the person likely be granted probation or other community sentence if convicted of the offense?) Include here if any plea offers have been made. _____

_____K. Facts indicating possibility of law violation if person in custody is released without certain conditions: _____

_____L. Facts/lack of facts indicating the possibility of witness intimidation: _____

_____M. Ties to community/community involvement: _____

_____N. Military service history: _____

_____O. Any other factors indicating ties to the community, why won't flee, and absence of community danger concerns: _____

a. Years in Colorado? Denver? _____

b. Education: _____

c. Pretrial Conditions to ensure appearance: _____

Take time to get to know people.
Understand where they are coming
from, what is important to them.
Make sure they are with you.

Client's history:
Client Feels Seen

Early exposure to
pornography

Early exposure to
sexual experience-
playing doctor
with little boys

AOL- computer
pornography

RV down the
street – meeting
older men for sex
starting at age 14

At 16 years old
began
“relationship” with
man in his 30's

At 17 began
“relationship” with
his dentist- a man
in his 40's

Adult relationships

Age-appropriate relationships during his 20's and 30's

Introduced to BDSM by an adult former boyfriend-consensual





Take the
opportunity to
“humanize”
Client

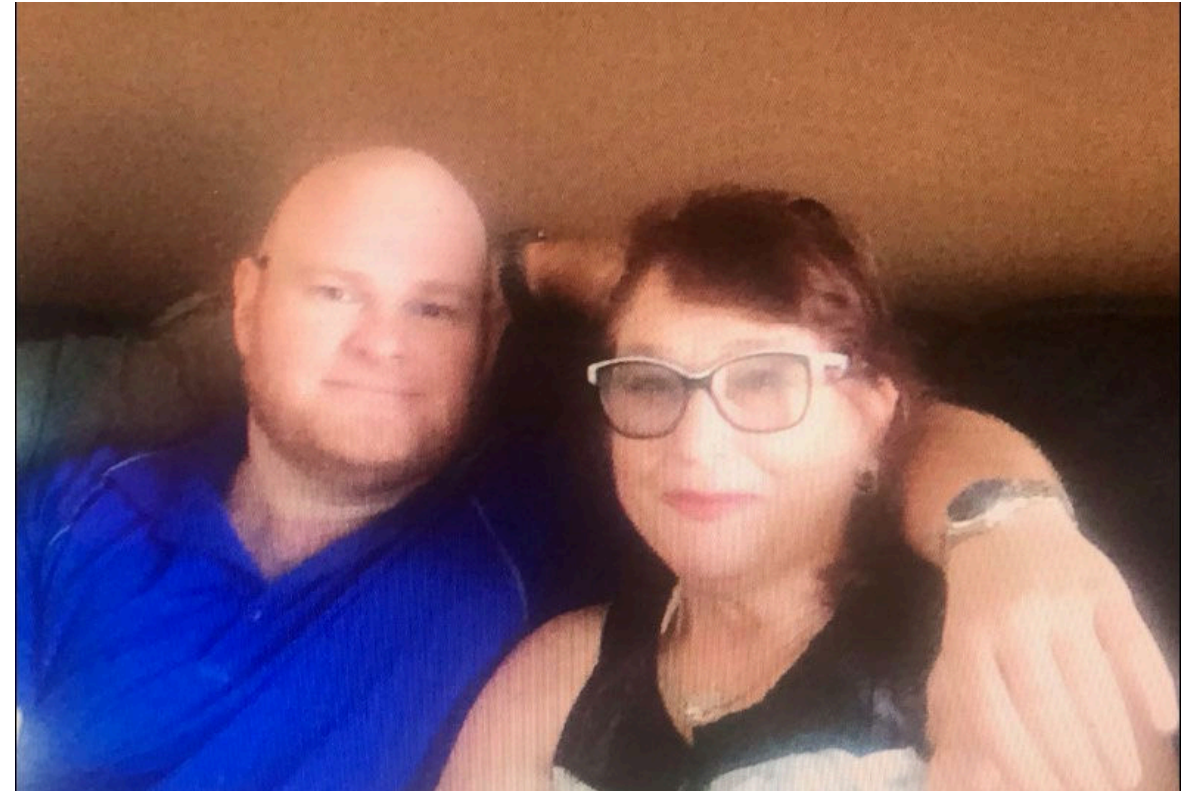
BULLIED
THROUGHOUT
CHILDHOOD



Team Approach

- Investigator
- Social Worker
- Videographer
- Expert





Interview and Pictures
and family flew to CO to
be interviewed on video

- Mother
- Father
- Grandmother
- Sister



Yearly trips to National Parks
and Presidential Libraries

Co-worker- Supervisor



Friends interviews (audio) pictures



Ex-
Boyfriends



Hire Expert: Comprehensive Psycho-Social- Sexual Evaluation

SARAH RASCHE, LCSW, PMH-C



Sarah is a Licensed Clinical Social Worker (LCSW). She earned her degree from the Graduate School of Social Work at the University of Denver with a clinical focus in family systems and a graduate certificate in interpersonal trauma studies.

Sarah is certified as a Perinatal Mental Health Specialist through [Postpartum Support International](#) and completed a fellowship at the [Irving Harris Program](#) for Infant Mental Health and Early Childhood Development through University of Colorado's Department of Psychiatry. In addition to her specialty training, Sarah continues to work as a generalist with a diverse clientele experiencing mood

Biopsychosocial Report

Prepared by Sarah Rasche LCSW

May 14, 2019

Name: [REDACTED]

Date of [REDACTED] 0

Defense Attorney: Colette Tvedt

Case No: 17-CR-00407-CMA

Introduction

My name is Sarah Rasche and I am a Licensed Clinical Social Worker (LCSW). I joined Ryan McCraw's defense team in September of 2018 for client support and mitigation purposes. In preparation of this report, I have met regularly with Ryan, conducted mitigation interviews, and requested and reviewed academic, legal, medical and behavioral health records. Ryan is 39 years old. He was first detained at CCA Leavenworth Detention Center in late October 2017. He is currently detained at Jefferson County Detention Center pending Federal sentencing.

Sources

Interviews

- Ryan McCraw (client): 10 Client Visits from September 2018 through May 2019
- [REDACTED] (mother): 11/6/18 and 4/22/19
- Beverley Canaan (maternal grandmother): 11/6/18 and 4/22/19
- Dennis McCraw (father): 11/12/18
- Chun Wu (ex-boyfriend): 12/4/18
- Steven Aguire (friend): 1/4/19
- Michael Reynoso (ex-boyfriend): 1/16/19
- LaStar Walters (Sprint Supervisor): 1/18/19 and 4/15/19

Records



Internet Behavior Consulting, LLC

"Where the mind meets technology."

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Dr. David L. Delmonico, Ph.D., NCC, ACS

Dr. David Delmonico is a National Board Certified Counselor, Approved Clinical Supervisor, and Professor at Duquesne University in Pittsburgh, Pennsylvania. Dr. Delmonico earned degrees in psychology, community counseling, and counseling and human development services at Kent State University. In 2003, Dr. Delmonico and his business partner Elizabeth Griffin, MA, LMFT, established Internet Behavior Consulting, LLC. IBC conducts research, consultation, and training on topics related to problematic online sexual behavior – including sexual addiction / sexual compulsivity / hypersexuality, cyberpsychology, and cyberoffense behavior. Training audiences have included mental health workers, probation/parole officers, law enforcement, prosecutors, defense attorneys, etc. IBC has provided expert consultation services to attorneys in hundreds of cases across the country related to possession, receipt, distribution, or production of child pornography, enticement of minors, sexual exploitation of a minor, online sex trafficking, criminal sexual enterprise, and other related charges.

Dr. Delmonico is co-author of four books, including *In the Shadows of the Net*, *Cybersex Unhooked*, *Cybersex Unplugged*, and *Illegal Images*. He has published numerous peer-reviewed articles on a variety of technology and sexuality topics. Dr. Delmonico is the founder and director of the Online Behavior Research and Education Center (OBREC) at Duquesne University, and is past editor-in-chief of the *Sexual Addiction and Compulsivity* journal.

A large orange circle graphic is positioned on the left side of the slide, partially overlapping the text.

Interviews, Testing, Expert Opinion

Minnesota Multiphasic Personality Inventory (MMPI-2)

Millan Clinical Multiaxial Inventory (MCMI-III)

Beck Depression Inventory

Beck Anxiety Inventory

Affinity Measure of Sexual interest

Static 99-Risk Assessment

Stable-2007

Did not see
himself as
a Victim

NOTE TO SELF:

I AM NOT A VICTIM

Depression,
Anxiety and
Suicide Attempts-
Get signed
Releases and
Records



Drinking-

- Coping strategy to temporarily:
- Reduce tension and anxiety
- Alleviate emotional pain
- Escape anguish
- Absolve guilt



Understand the Subculture

- Read social science articles
- Google
- Talk to the experts
- Understand that it may you feel very uncomfortable, but you cannot advocate unless you can speak about it

Introduced to Pup and Handler Subculture by former BF

- Pup play for relaxation and sexual gratification
- No a pervasion or sexually deviant
- Back up with research and social science articles – attach or hyperlink to articles in Sentencing Memorandum
- Wignall and McCormack 2017



Original Paper | [Published: 14 December 2015](#)

An Exploratory Study of a New Kink Activity: “Pup Play”

[Liam Wignall](#)  & [Mark McCormack](#)

[Archives of Sexual Behavior](#) **46**, 801–811 (2017) | [Cite this article](#)

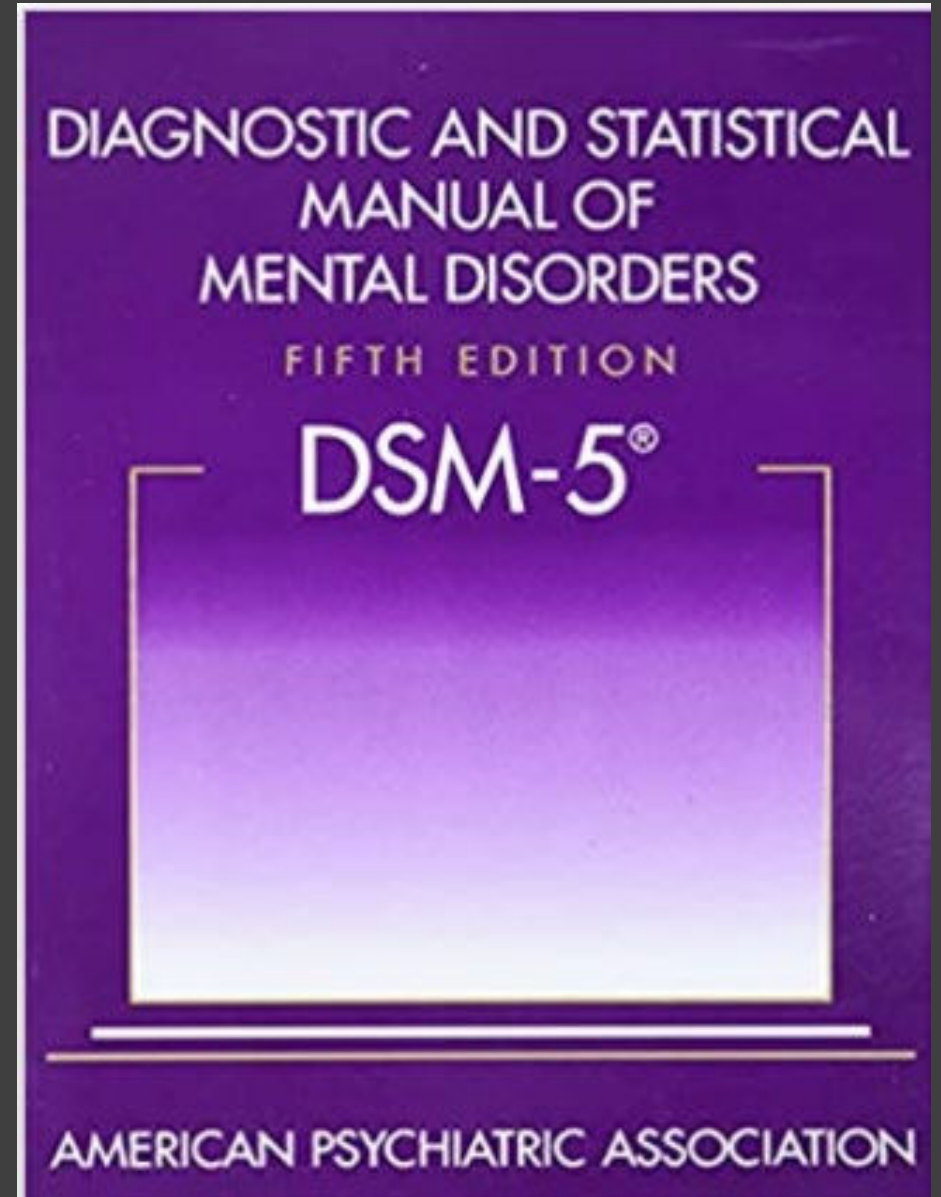
2315 Accesses | **27** Citations | **40** Altmetric | [Metrics](#)

Abstract

This study presents the narratives and experiences of 30 gay and bisexual men who participate in a behavior known as “pup play.” Never empirically studied before, we use in-depth interviews and a modified form of grounded theory to describe the dynamics of pup play and develop a conceptual framework with which to understand it. We discuss the dynamics of pup play, demonstrating that it primarily consists of mimicking the behaviors and adopting the role of a dog. We show that the majority of participants use pup play for sexual satisfaction. It is also a form of relaxation, demonstrated primarily through the existence of a “headspace.” We classify pup play as a kink, and find no evidence for the framing of it as a form of zoophilia. We call for further research on pup play as a sexual kink and leisure activity from both qualitative and quantitative perspectives.

Diagnostic Criteria Met:

- Persistent Depression
- Alcohol Use Disorder
- Dependent Personality Disorder
- Hypersexuality



NOT ANTISOCIAL PERSONALITY DISORDER

- Antisocial personality disorder, sometimes called sociopathy, is a mental disorder in which a person consistently shows no regard for right and wrong and ignores the rights and feelings of others. People with antisocial personality disorder tend to antagonize, manipulate or treat others harshly or with callous indifference. They show no guilt or remorse for their behavior.
- Individuals with antisocial personality disorder often violate the law, becoming criminals. They may lie, behave violently or impulsively, and have problems with drug and alcohol use. Because of these characteristics, people with this disorder typically can't fulfill responsibilities related to family, work or school.



Not a Pedophile!

- Mr. Jones ***does not meet the criteria for pedophilic disorder and should not be considered a pedophile.*** This opinion is based on various testing/assessment results, clinical rating scales, background/history, no evidence of child-seeking behaviors (e.g., volunteer work, occupation giving access to children, etc.), and a lack of emotional congruence with prepubescent children.

Not the lurking
man in
playground
praying on
children



Porn, hook-ups and the reality of sex for Generation Z





**THE WORLD'S
LARGEST
SOCIAL
NETWORKING
APP FOR GAY,
BI, TRANS,
AND QUEER
PEOPLE.**

1. AGE RESTRICTIONS AND SAFETY.

1. NO USE BY UNDERAGE PERSONS. NO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS (OR TWENTY-ONE (21) YEARS IN PLACES WHERE EIGHTEEN (18) YEARS IS NOT THE AGE OF MAJORITY) MAY DIRECTLY OR INDIRECTLY VIEW, POSSESS OR OTHERWISE USE THE GRINDR SERVICES.

2. YOU MUST BE A LEGAL ADULT. YOU HEREBY REPRESENT AND WARRANT THAT YOU ARE CURRENTLY EIGHTEEN (18) YEARS OF AGE OR OVER (OR TWENTY-ONE (21) YEARS IN PLACES WHERE EIGHTEEN (18) YEARS IS NOT THE AGE OF MAJORITY) AND YOU ARE CAPABLE OF LAWFULLY ENTERING INTO AND PERFORMING ALL THE OBLIGATIONS SET FORTH IN THIS AGREEMENT.

Victimization and the i-Generation

When considering the victims in this case, it is important to understand that access to online sexual material has dramatically increased over the past 10-15 years. The use of smart phones, tablets, gaming systems, and other portable devices has wide appeal to one of the most active digital generations – the iGen. The victims in this case are members of this iGen (youth ages 15-25). The iGen not only have access to more than 250,000,000+ pornography websites, they also access a variety of apps to explore their sexual curiosities. Curiosity and exploration are even more common among LGBTQ youth who seek sexual health information, getting support from others, or meeting others to engage in sexual behavior. Research by (Macapagal, et. al, 2018) reported that nearly 50% of their sample of young gay males admitted to using technology to find their casual sexual partners.

Thousands of
Texts





Does NOT
excuse illegal
and
despicable
acts... but
frames it in a
different
light

STRONG CONCLUSIONS!



RISK TO THE COMMUNITY-Low-Moderate

Risk to Community - Based on the totality of the evidence gathered Mr. Jones is a low-moderate risk for any type of sexual offense behavior and has multiple **protective factors** to further minimize his recidivism risk. Considerations that contributed to this conclusion included:

- Jones demonstrates **sexual interest in peer-aged adults**.
- Jones **does not** meet the criteria for **pedophilic disorder**.
- Jones is **not** diagnosed with an **antisocial personality disorder**.
- Jones actuarial risk assessment - the **low-moderate risk** category.
- Jones will continue to “**age out**” of his **risk for sexual recidivism**.

Despicable-
but no
enhancement

Fetish

**It's not
illegal, it's
just
frowned
upon.**



Pre-sentence
Report
Objections!

USSG §2G2.1(b)(4)(A): Sadistic or Masochistic Conduct or Depictions of Violence.

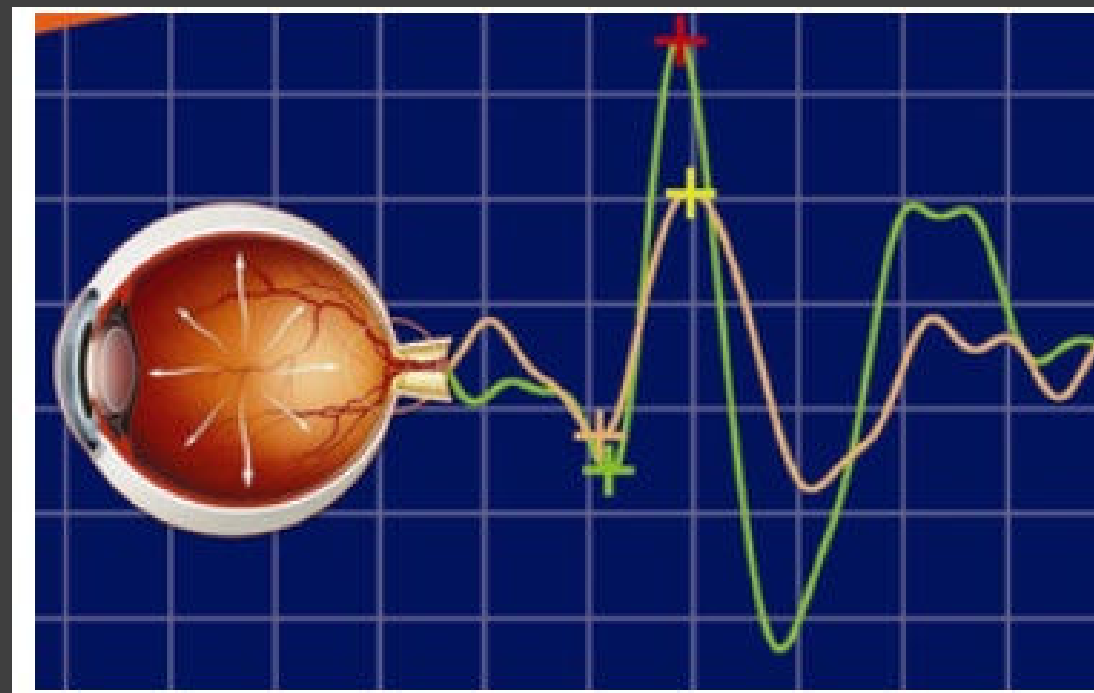
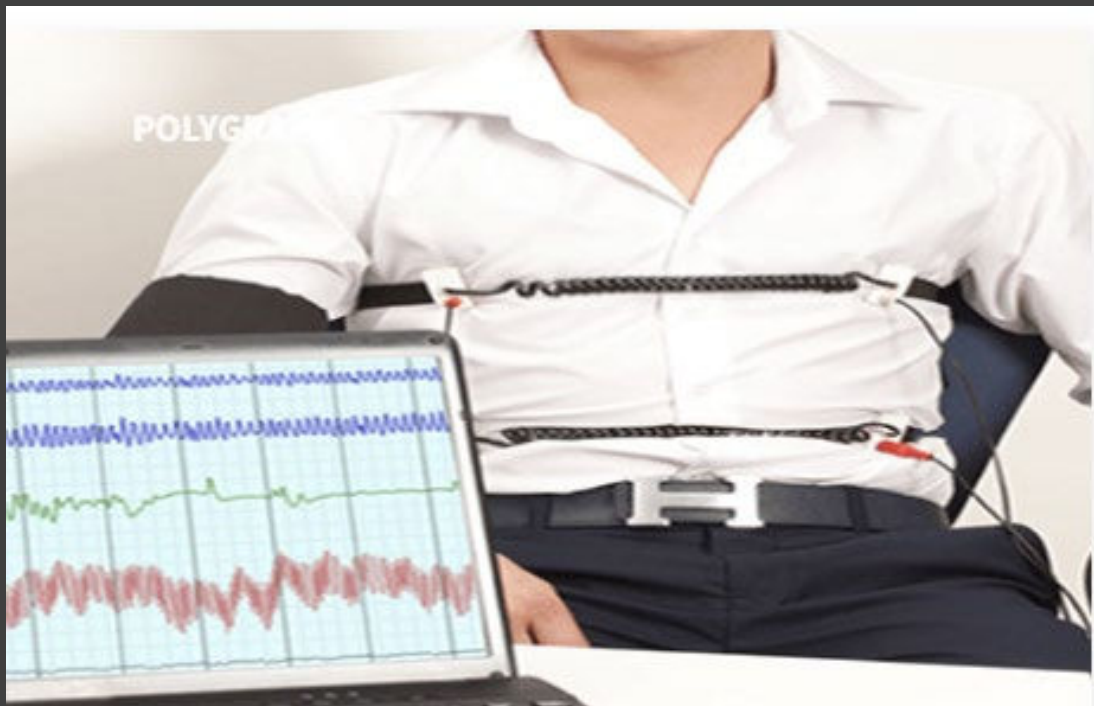
- 4-point enhancement should not apply;
- Guidelines do not define sadism/masochism or depictions of violence;
- BDSM (Bondage, Dominance, sadism, masochism-DSM-V: Paraphilia Interests including BDSM no longer pathologized or considered mental illness;
- Interest in BDSM is considered normal human variation- not sickness; not mental illness;
- No depiction of resistance- although age- not able to consent; the 3 young men showed no resistance or depiction of pain



Take the
opportunity to
“humanize”
Client

BULLIED THROUGHOUT
CHILDHOOD





Object to PSR “Special Conditions” of SR-
overbroad/vague/not
individualized

- **Polygraph**
- **Visual Response testing**



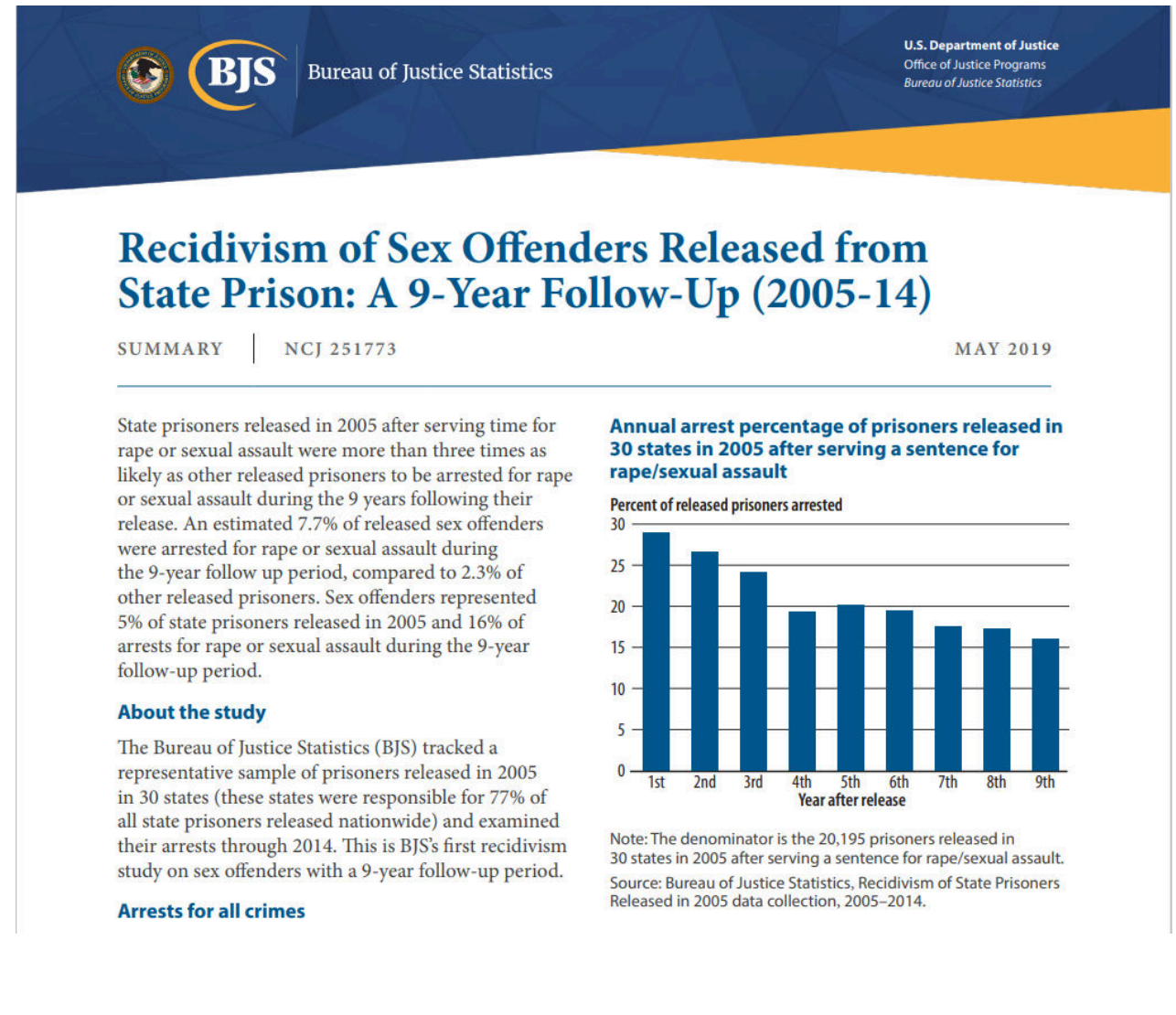
No exposure
to children
under 18

- The risk of recidivism is also a factor to be taken into account with regard to protecting the public from the defendant's further crimes. **Unfortunately, valid risk assessment instruments to predict sexual recidivism by child pornography offenders currently do not exist.**
- On the issue of recidivism and child pornography offenses, **Dr. Gene Abel** testified before the Sentencing Commission at a public hearing on February 15, 2012, addressing federal child pornography offenses.
- Dr. Abel is a well-known psychiatrist and widely respected leader in the field of diagnosing and treating sexual problems. He is considered by many to be the leading psychophysiology researcher in studies of sexual behavior problems in the United States. Dr. Abel was also presented with a series of questions by the Sentencing Commission. **One of the questions he was asked was "[a]re there valid risk assessment instruments to predict sexual recidivism by child pornography offenders." His response: "We don't have that—I don't have that, at present."**



Morning of Sentencing

- BJS conducted huge sample including men who had been imprisoned for a sex offense in 15 states. The REAL headline is this: 95% of the men who committed a sex offense, had not been convicted of another sex offense after 9 years!





SENTENCING-
Prepare Client
Emotional,
angry



