

## Cybersex with Minors: Forensic Implications

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**ABSTRACT:** This paper is designed to assist forensic psychiatrists/psychologists who evaluate adults who commit sexual crimes against children on the Internet. The typical offender is an adult male who logs onto the Internet and enters a chat room in which children congregate. Unbeknownst to the offender, undercover police officers are posing as minors in the chat rooms. The undercover officer (pretend kid) and offender engage in increasingly explicit, sexual conversation; the offender may transmit erotic photographs to the undercover officer and/or arrange to meet at a motel in order to have sexual intercourse. The authors will discuss the relevant legal, clinical, and ethical aspects of examining these offenders, and describe specific cases that the author (2) evaluated.

**KEYWORDS:** forensic science, child molestation, Internet, pedophilia, forensic psychiatry, dangerousness, chat rooms, pornography

There is a lot of sexually-oriented material on the Internet that is legal. There is pornography, dating services, and chat rooms. Chat rooms are meeting places on the Internet where people with similar interests send electronic messages to each other. In a chat room, individuals engage in real-time dialogue, i.e., when a message is typed, it appears almost immediately on the computer screen of other individuals in the chat room. The chat rooms foster an exchange of information or ideas on a particular topic. Two individuals may break away from the main chat room to have a private chat. Individuals in the chat room use “screen names” of their choosing. There are chat rooms devoted to sports, finance, sex, and many other topics.

This paper describes individuals who seduce minors in chat rooms. The individual/perpetrator, usually an adult male, enters chat rooms that minors congregate in, such as chat rooms devoted to sports and hobbies. Unbeknownst to the perpetrator, undercover officers enter the chat rooms posing as minors. The officer may identify herself as Mary13. The perpetrator engages in increasingly explicit sexual talk with the undercover officer and eventually arranges to meet in order to have sex. When the perpetrator arrives at the meeting place, he is met by an undercover officer and uniformed officers and is arrested.

### Materials and Methods

The issues relevant to forensic psychiatry/psychology include:

1. Cyberkidding: A term we coined to describe any cyberact of a sexual nature between an adult and a “kid” (minor under the age of consent)
2. Case law
3. Forensic issues
  - a. Forensic evaluations
  - b. FBI diagnostic classification of child molesters
  - c. Case examples
  - d. Case of Patrick Naughton

### Definitions

Cyberkidding is a word that we coined to describe any cyberact of a sexual nature between an adult and a “kid” (kid is a minor under the age of consent). Crimes included under this definition include making or distributing child pornography on the Internet along with chat room seduction of minors.

### Background Information

The Internet is policed. The FBI in Los Angeles target individuals involved in Cyberkidding. The FBI has agents who sit at computers and enter chat rooms. The FBI is both proactive and reactive; they actively seek out sex offenders by entering chat rooms that attract minors and the FBI also reacts to parent complaints of adults seducing their children on the Internet. The undercover agent speaks with others in the chat room in hopes of being “hit on” by an adult offender. The agents let the offender initiate any sexual talk and eventually, the offender proposes to meet the “pretend kid” (undercover agent) for a sexual rendezvous (1).

### Case Law

There are several areas of legal interest in these cases. One case that reached the California Court of Appeals, *People v. Reed-1996* (2), addresses the legal issues clearly. Although the case does not involve the Internet, its holdings are applicable to cases involving adults who attempt to seduce minors in chat rooms.

### Issues

- (1) Does the fictional nature of the children invalidate the conviction?
- (2) Did the trial court err in convicting the defendant of *at-tempted* molestation?
- (3) Was the defendant entrapped?

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### Holdings

- (1) The fictional nature of the children whom the defendant intended to molest was not determinative of the validity of the conviction.
- (2) The fact finder could have reasonably concluded that the defendant did an act beyond mere preparation for sexual molestation, an act that was ineffectual in carrying out a molestation only because the circumstances were not as he perceived them, not because he never intended to do a criminal act.
- (3) The defendant failed to carry *his burden* to show that he was entrapped, and the trial court properly rejected his defense.

### Facts

Mr. Reed placed an ad in *Swing* magazine stating that he was a white male seeking a woman of any race, age, or size to keep up with his sexual appetite. The ad featured a photograph of a sexually aroused, nude male, with his face blocked out. Reed arranged with an undercover officer, who was posing as a mother of two young daughters, to meet and have sex with her daughters, age 12 and 9, at a motel room. He was convicted of attempted child molestation and placed on felony probation after a six-month jail term. Reed appealed his conviction.

### Reasoning

Regarding the fictional nature of the victim, the Appeals Court reasoned that Reed's failure to foresee that there would be no children waiting did not excuse him from being convicted of attempted child molestation. Reed showed no honest and reasonable belief that his actions would have been legal. The inability to complete the crime is unimportant.

Concerning whether Reed actually committed an attempted child molestation, the crime of attempt requires two elements: a *specific intent to commit the crime* and a *direct but ineffectual act done towards its commission*. The act done in furtherance of the crime must be unequivocal. If it is not clear from a suspect's acts what he or she intends to do, an observer cannot reasonably conclude that a crime will be committed. When the acts are such that any rational person would believe a crime is about to be consummated absent an intervening force, the attempt is underway. The appeals court cites a California Supreme Court case, *People v. Dillon*, in further explaining the rule that the act done in furtherance of the crime must be unequivocal, explaining: "Our reference to interruption by independent circumstances rather than the will of the offender merely clarifies the requirement that the act be unequivocal. It is obviously impossible to be certain that a person will not lose his resolve to commit the crime until he completes the last act necessary for its accomplishment. But the law of attempts would be largely without function if it could not be invoked until the trigger was pulled, the blow struck, or the money seized. When the acts are such that any rational person would believe a crime is about to be consummated absent an intervening force, the attempt is underway."

In Reed's case, the Appeals Court reasoned that the fact finder reasonably concluded that the defendant did an act beyond mere preparation for sexual molestation, an act that was ineffectual in carrying out a molestation only because the circumstances were not as he perceived them, not because he never intended to do a criminal act. The record supported a reasonable inference that the defendant went to the motel and entered the room that supposedly held the children and that he intended to sexually molest them. He

had brought sexual items that would aid him in seducing and violating girls of their supposed ages, and when the undercover officer asked him if he was ready to meet the girls, he answered affirmatively. His act of walking with the undercover officer into the room he expected would contain the girls was clearly a step beyond mere preparation for the crime, though it was not an element of the crime. That this was an unequivocal first act in carrying out the intended crime was especially evident given that his plan for the seduction was known in detail to the officers at the time they arrested him.

Furthermore, he was not entrapped; the undercover officers merely provided an opportunity for the defendant to attempt to molest two girls under 14. The proper standard for evaluating the defense of entrapment involves determining whether the conduct of the law enforcement agent was likely to induce a normally law-abiding citizen to commit the offense. For purposes of this test, it is presumed that such a citizen would normally resist the temptation to commit a crime when presented with the simple opportunity to act unlawfully. Official conduct that does no more than offer that opportunity to the suspect is therefore permissible; but it is impermissible for the police to pressure the suspect by overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime.

The record showed no evidence that the police cajoled or importuned the defendant, nor that they overbore his will. The defendant precipitated contact with the officers by placing an ad soliciting sex with a female of "any age." An undercover officer wrote to the defendant offering him the opportunity to engage in lewd conduct with two minors. During the lengthy correspondence and the series of phone calls, the officers gave the defendant every opportunity to withdraw from the plan to teach sex to the two girls, but the defendant repeatedly refrained from withdrawing, even when advised of the risks involved in such an enterprise. Although the officers requested that defendant describe to them what he intended to do with the girls, they gave him no suggestions about his proposed activities, other than indicating that they were looking for a good "teacher" who would make the activities fun.

Another case that is more on point is *U.S. v. Han* (3) 1999. In *Han*, the Court upheld a conviction of a defendant who contacted an undercover agent in a chat room entitled "*Not Yet Legal*." The defendant engaged in conversations with the undercover agent named "Julie" who was pretending to be a 13-year-old female. The conversations between defendant and "Julie" were sexual in nature, and defendant inquired whether she would have sex with him if he traveled from his home in New Jersey to New York to see her. The defendant was arrested after he arrived at the prearranged meeting place. The defendant argued that the government failed to prove the elements of the offense beyond a reasonable doubt. The Court held that the government presented sufficient evidence for the jury to conclude that defendant knowingly and willfully traveled in order to engage in sexual activity with "Julie," whom he believed was less than 16.

There is other case law that implies that one can be convicted of attempted lewd act upon a minor without leaving their computer. Again, like the facts described in Reed, the case law does not involve the Internet, but its holdings are applicable to Internet-related crimes. In *People v. Imler* (9 Cal.App.4<sup>th</sup> 1178) 1992, Mr. Imler placed a phone call to a minor and told the minor that he was holding his father hostage and ordered the minor to touch his own penis. The California Court of Appeals affirmed Imler's conviction for attempted lewd act on a minor and held that one can commit at-

tempted child molestation by speaking to a minor over the telephone and instructing the minor to do sexual acts. This case implies that an adult in a chat room can be convicted of attempted lewd act on a minor if he sent messages to the minor that instructed the minor to perform sexual acts, regardless of whether the minor complied.

Other case law has held that defendants have no First Amendment rights when using the Internet to transmit child pornography and defendants do not have a reasonable expectation of privacy while on the Internet (4). The inherently illegal, indeed criminal, nature of the conduct required in producing child pornography itself justifies removing such expression from protection of the First Amendment (5).

In a case that should give pause to those who purport to be collecting child pornography in the name of scientific or journalistic research, the indictment of a seasoned reporter who worked as a journalist for over 30 years was upheld for receiving and transmitting child pornography over the Internet in 1996 (6). While working as a freelance journalist, the defendant claimed he was investigating child pornography on the Internet.

In *U.S. v. Poehlman* (7), the Ninth Circuit Court of Appeals addresses the issue of entrapment. Mr. Poehlman was a cross-dresser and foot fetishist who sought the company of like-minded individuals on the Internet. What he found, instead, were federal agents looking to catch child molesters. The Court ultimately held that Poehlman was entrapped. In concluding their opinion, the Court states, “‘When the Government’s quest for convictions leads to the apprehension of an otherwise law-abiding citizen who if left to his own devices, likely would have never run afoul of the law, the courts should intervene.’” Jacobson, 503 U.S. at 553-54. So far as this record discloses, Poehlman is such a citizen. Prior to his unfortunate encounter with Sharon (undercover agent), he was on a quest for an adult relationship with a woman who would understand and accept his proclivities, which did not include sex with children. There is surely enough real crime in our society that it is unnecessary for our law enforcement officials to spend months luring an obviously lonely and confused individual to cross the line between fantasy and criminality.”

### Forensic Evaluations

The forensic psychiatrist/psychologist who examines the defendant charged with Cyberkidding is asked by the Court to assess sexual psychopathology, dangerousness, and whether the defendant can be safely treated while on probation. A doctor who examines these individuals must be thoroughly familiar with diagnostic categories of child molesters, actuarial, and clinical risk factors in assessment of dangerousness and treatment options.

### Diagnostic Classification of Child Molesters (FBI typology) (8)

1. Situational child molesters
  - a. Regressed—“immature, socially inept individuals who relate to children as peers. These individuals may be experiencing a brief period of low self-esteem and turn to children or other available juveniles.”
  - b. Morally indiscriminate—“these are antisocial individuals who use and abuse everything they touch. Their victims are chosen on the basis of vulnerability and opportunity and only coincidentally because they are children.”
  - c. Sexually indiscriminate—“These individuals are referred to in the psychoanalytic literature as ‘polymorphous perverse.’

They have vaguely defined sexual preferences and will experiment with almost any type of sexual behavior.”

- d. Inadequate—“These individuals are social misfits who may be developmentally disabled, psychotic, senile, or organically dysfunctional. They rarely have contact with others and may see children as vulnerable objects with which to satisfy their sexual curiosity. These individuals have been known to murder their victims. However, any type of molester is capable of murder in order to avoid detection.”
2. Preferential child molesters
    - a. Seduction—“These individuals have exclusive sexual interest in children, and court and groom them. They are usually able to identify those children who will not divulge the sexual behavior.”
    - b. Introverted—“These individuals have a fixated interest in children, but do not have the social skills to seduce them. Typically, they molest strangers or very young children, or they may marry women with children in the age range of their preference.”
    - c. Sadistic—“This individual’s sexual preference for children is coupled with a need to inflict pain in order to obtain sexual gratification. These individuals are obviously dangerous and fortunately, rare.”

### Diagnosis of Sexual Psychopathology

Paraphilia in DSM-IV (9) is defined as recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving: (a) nonhuman objects, (b) the suffering or humiliation of oneself or one’s partner, or (c) children or other nonconsenting persons, that occur over a period of at least six months. The paraphilic fantasies or stimuli vary from being necessary for sexual arousal in some individuals, while in others, it is an episodic phenomenon in a person who usually functions sexually without paraphilic fantasies or stimuli. As one may deduce, not every person with a paraphilia acts out their behavior; some paraphiliacs do not act on their urges or fantasies. The fantasies and imagery of the individual with a paraphilia is a “gold mine” of diagnostic information. Many paraphilics can trace their fantasy themes to puberty or grade school. Paraphilic fantasies and images lead to intense arousal; occasionally, their arousal is described as intrusive and occurring even when it is unwanted. Some paraphilics masturbate up to 15 times a day, and may use pornography, prostitutes, or telephone sex (10).

A pedophile often has an age range of victims that they fantasize about and may describe being sexually aroused by the smooth, soft, hairless skin of an innocent appearing six-year-old, but being “turned off” by a 13-year-old with pubic hair. Individuals with pedophilia who act on their urges have varying degrees of sexual activity with victims, ranging from sexual intercourse to gentle touching of the chest and kissing.

The complete evaluation of an individual charged with child molestation should also include questions regarding the presence of other paraphilias, such as: exhibitionism, fetishism, frotteurism, sexual masochism, sexual sadism, voyeurism, and transvestic fetishism.

Some doctors utilize penile plethysmography and other physiological tests (Abel test) to assist in the diagnosis of sexual psychopathology. During sentencing, the presence or lack of sexual psychopathology may be considered by the court.

*Dangerousness*

The diagnosis of specific types of sexual psychopathology allows the examiner to make an accurate assessment of a perpetrator's risk of harm to minors in the community and to recommend appropriate treatment. For example, a preferential child molester with a past history of conviction for child molestation poses a different risk of harm and requires different treatment interventions than a situational offender whose dementia was the causative factor in the molestation.

The forensic doctor must be thoroughly familiar with actuarial and clinical risk factors when making a risk assessment. An example of an actuarial risk factor is that research has shown that offenders who molest males are more likely to reoffend than those who molest females (11). An example of a clinical risk factor is a perpetrator who lacks a social support network may be more likely to sexually reoffend because he is lonely.

Treatment recommendations should be directed at decreasing the risk of sexual recidivism. In their book entitled, *The Sex Offender*, Cellini and Schwartz (12) suggest sentencing conditions for offenders who are treated in the community, some of which are listed here:

1. Individual assumes responsibility for paying counseling costs for victims.
2. Sex offenders should have regular contact with probation officers.
3. Individual must enroll, participate in and complete a treatment program for sex offenders approved by probation or parole officer.
4. Not possess any deadly weapon.
5. Submit to random polygraph examinations to determine compliance with conditions of parole or probation.
6. Possible use of curfew.
7. No contact with persons under age 18.
8. No contact with victim (no letter writing, telephone calls, e-mail) unless approved by victim's therapist and offender's therapist and visits are supervised.
9. Cannot live in apartment complex which allows children.
10. Any offender with substance abuse problem will attend and successfully complete a drug/alcohol treatment program.
11. No use of computers.

Treatment may also include injections of Depo-Provera (13). If the offender has a mental illness or substance abuse, treatment should address these conditions; if untreated, these conditions may increase the risk of sexual recidivism.

Several cases that one of us (KS) consulted on are described below.

*Case A*

Twenty-four-year-old white male, charged with attempted lewd conduct and attempted oral copulation of a minor. He met the victim (undercover officer posing as a 13-year-old girl named "Jane") in a chat-room. Jane advertised herself as interested in modeling. He e-mailed Jane and asked for her age, a photograph of herself, and told her that he could assist her in becoming a model. Jane (undercover agent) brought up the issue of sex and A pursued the topic. Jane said that she had taken sexy pictures in the past and that the photographer had touched her. She said that she posed in a bra and panties and asked A if she would have to pose naked. She asked if his friend, a photographer, wanted to have sex with her and A re-

sponded that he could find someone to have sex with her if that's all she wanted or he could arrange for a photo shoot.

They had a telephone conversation and Jane asked if he still wanted to have sex and said she feared that having sex would hurt her. He said they would not have sex. Jane said that she wanted to have some sexual contact and asked if he had condoms. He said he did not know if he wanted to have sex with her. He told her that she sounded much older than 13. He offered to perform oral copulation on her after he learned that she had done it to other men but had never had it done on her. They agreed to meet at the market and he was arrested.

"A" told officers that he wanted to confront Jane because he did not believe she was 13. Regarding his past history, he had no evidence of previous deviant sexual behavior or thoughts. He had no arrest record, psychiatric history, or substance abuse history.

In a report to the court, one of us (KS) opined that he was a situational offender who did not have pedophilia. He did not pose a risk of harm to the community. He had personality traits that were maladaptive that could be treated with psychotherapy. He was convicted of misdemeanor child annoyance and given probation.

*Case B*

Twenty-five-year-old black male, whose boss noticed that B had child pornography on his computer at work. His boss called police. B had a large number of adult pornography pictures in his computer. B stated that he downloaded the child pornography because he was curious how such "gross" images could be free on the Internet. He did not have a past history of sexually deviant thoughts or behaviors. He had no prior arrests, substance abuse history, or psychiatric history. He was an employed college graduate.

Dr. Sharma opined that B did not demonstrate any significant sexual psychopathology and did not need to register as a sex offender, nor did he pose a danger to the community if he had not been required to register as a sex offender. B was convicted by a jury of misdemeanor possession of child pornography and received a 60-day jail sentence and three years formal probation.

*Case C*

Thirty-six-year-old white male self-described "boy-lover," charged with sending harmful matter with the intent of seducing a minor and attempted lewd act upon a minor. C met Jason 13 (undercover agent posing as a 13-year-old boy) in a chat-room. C sent Jason, via e-mail, a nude photograph of himself with an erection along with a photo of two male minors engaged in oral copulation. C asked Jason if he was really 13 and arranged to meet Jason to perform oral sex on him. C drove to the meeting place and left without exiting his car. He was arrested at his house and told police that he believed Jason was pretending to be 13, and was actually older.

C had a history of sexual psychopathology. Between the ages of 11 to 16, he had sexual contact with approximately 40 adult males. He found the sexual contact to be pleasurable. As an adult, he met adult male sexual partners on the Internet. He began downloading child pornography on the Internet about two years ago. C admitted to masturbating while fantasizing about young boys.

Dr. Sharma opined that C has significant sexual psychopathology and that treatment could reduce his dangerousness to minors in the community. The fact that he had successful sexual relationships with adult men offers reasonable hope that he can be treated in the community. He was found guilty, sentenced to one year in jail, and three years formal probation.

A case that the authors followed very closely in the Los Angeles newspapers involved a 34-year-old married, former executive vice president of Go.com, a popular Internet site owned by Walt Disney. Patrick Naughton used to be with Sun Microsystems and is one of the creators of the computer language called Java. He is charged with three felony counts, including possession of child pornography and engaging in interstate travel with intent to have sex with a minor. He faces up to a 35-year prison sentence (14).

Patrick Naughton corresponded with an undercover agent who was posing as a 13-year-old girl in a chat-room called "Dad&DaughterSex." He arranged to meet the girl at the Santa Monica pier for a sexual rendezvous and was arrested. At his trial, Naughton argued that he never intended to have sex with a minor and that his steamy online encounters with an undercover FBI agent posing as a teenage girl were part of a fantasy life he pursued to escape emotional problems at work. He said that lying about one's age, gender, or other personal details is the point of taking part in the sex chat-rooms on the Internet. He believed that when he arrived at the pier he would meet a nice, confused, 40-year-old woman (15).

His defense centers on the premise that the Internet is a massive masquerade ball, and that he never expected to meet a minor in the sex-themed chat rooms. He went to the pier out of curiosity. He claimed that his chat sessions with the undercover officer were not very satisfying because it was always the same thing from her, "What are we going to do if we meet? It was annoying." He had some images of child pornography on a personal computer.

Mr. Naughton was initially convicted of possession of child pornography; a mistrial was declared on the two counts of using the Internet to solicit sex from a minor and interstate travel with intent to have sex with a minor. The jury was deadlocked over whether to believe his "fantasy" defense. One juror said he found the argument plausible, "For me, the chat room conversations sounded like fantasies." Jurors voted roughly along gender lines, with most of the women voting to convict. The jurors doubted that Naughton was prepared to go through with the sexual encounter. They thought the government would have had a stronger case if Naughton had been allowed to go down to the beach and have sex talk with the undercover agent (16).

A federal judge overturned Naughton's conviction for possession of child pornography under a legal technicality; a portion of the federal law against child pornography was ruled unconstitutional. The justices in San Francisco Federal Appeals Court ruled that although the government can outlaw pornographic pictures of children, it cannot proscribe images that only appear to be children but are actually computer generated. The US Attorney decided to retry Naughton on all three counts (17,18). Days before the scheduled trial, Naughton pled guilty to seeking sex with a minor on the Internet and the government dropped the two other related charges. Mr. Naughton admitted in court that he did believe he was chatting with a minor and that the "dominant purpose" of his trip was to lure his correspondent into having sex with him. He faces up to 18 months in prison when he is sentenced in June 2000 (19). However, in an unusual plea agreement, Mr. Naughton helped the FBI develop a computer program to catch sexual predators on the Internet. He was sentenced to nine months of home detention, five years probation and a \$20,000 fine (20).

## Discussion

The Internet is a new venue for adults to sexually exploit minors. There are individuals who produce/distribute child pornography

and seduce minors on the Internet. The authors are surprised at the large number of individuals who are charged with Cyberkidding who have no past history of sexual deviancy. Many adults who are arrested for seducing minors in chat rooms are often surprised when they are arrested, and have expressed disbelief that they committed any wrongdoing. Some have said to the arresting officers words to the effect of, "you must be kidding, I knew you (the pretend kid/undercover officer) were only pretending to be a child." Nonetheless, the handcuffs are very real.

For some individuals, the Internet may create a false sense of security. While sitting in their own home, some Internet users may doubt that they can break any laws. They may view the Internet as a game, a fantasy world, where one can recklessly and anonymously make sexual comments to others, or enter chat rooms pretending to be someone they are not.

Sex crimes receive a lot of attention in the media. Society tends to view all persons charged with sex crimes as predatory sex offenders who are extremely dangerous. Forensic psychiatrists/psychologists who evaluate individuals charged with sex crimes on the Internet are asked by the court to assess a defendant's sexual psychopathology, dangerousness and to offer treatment recommendations. Forensic experts must be familiar with the numerous diagnostic types of sex offenders, risk assessment methods and treatment options. Additionally, forensic experts must have knowledge of legal issues such as intent and entrapment. In cases involving chat room seduction of an undercover officer, an offender is charged with attempted lewd act with a minor; it's obviously not possible to complete a lewd act with an undercover officer. Therefore, forensic examiners must understand the two elements of an 'attempt,' which are the criminal mental state and a direct but ineffectual act done towards its commission.

The authors have already described a framework for assessing a defendant's sexual psychopathology. Sometimes, the examiner is unable to clearly define the defendant's sexual psychopathology because the defendant is not willing to openly discuss his sexual history. In such cases, the authors assume that the charges against the defendant are accurately described in the records. In cases of Cyberkidding, the evidence usually consists of a transcript of the electronic messages and/or telephone conversations that occurred between the defendant and undercover officer, a copy of the pornography the defendant electronically transmitted to the undercover officer, statements the defendant made when arrested, and a police report detailing the type and amount of pornography on the defendant's computer.

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