

# The Psychoanalytic Bridge Between Psychology and the Law in SVP Evaluations: Assessing Emotional and Volitional Impairment

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**Eric P. Simon, Ph.D., ABPP**

SVP Evaluator

Department of State Hospitals

Sex Offender Commitment Program

[Eric.Simon@dsh.ca.gov](mailto:Eric.Simon@dsh.ca.gov) OR [EricSimon@Yahoo.com](mailto:EricSimon@Yahoo.com)

(916) 207-5157 OR (805) 598-7500

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## Caveats & Disclaimers

- Simon WORKS for DSH
- Simon ≠ DSH
- Simon ≠ SOCP

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## Evolution of this presentation

- Presented segments to CPDA March 2014
- Portions of this presentation are taken from an article of mine (“Psychoanalytic Principles as a Heuristic Framework to Bridge the Gap Between Psychology and the Law in SVP Evaluations: Assessing Emotional and Volitional Impairment”) that has been accepted for publication by the [International Journal of Law and Psychiatry](#) (expected to be printed early Spring 2015)
- Trained DSH SVP-E’s, CP’s & Contractors (Dec 2014 & Jan 2015)
- Will be presented at 34<sup>th</sup> Congress of IALMH in Vienna, (July 2015)

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## What's to come

- EI & VI legal concepts are vague and ill-defined
- Review Extant:
  - SVP Statute
  - SVP case law
  - Logical constructions
  - Limited Empirical Studies
- Theory based Heuristic Framework to Bridge the Gap Between Psychology and the Law in SVP Evaluations

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## Prevalence of SVP Laws

- Fed Govt. + 20 States (Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin).

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## The SVP Dilemma: Community Protection versus Civil Rights

- Need to protect the public
- But the individual has already paid much of the debt to society
- Confining based on behaviors not done yet but are at risk of doing

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## What the Statute says

- “‘Diagnosed mental disorder’ includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.”
- Nothing more said about EI/VI

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## SVP Constitutional Legitimacy

Kansas v. Hendricks (1997) (U.S. Supreme Court)  
– SVP civil commitment not for deterrence or retribution

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### Kansas v. Hendricks (1997) (cont.)

- SVP commit. not for deterrence or retribution
- Need Causal Nexus between M.I. and Dangerousness + Volitional Impairment

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### SVP Constitutional Legitimacy

- Kansas v. Crane (2002) (U.S. Supreme Court)
  - Most states require some degree of VI or EI (ostensibly defining aspects of MI and Causal Nexus)
  - Complete inability to control behavior not required.

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## Kansas v. Crane (2002) (continued)

- EI & VI are related to but distinct from dangerousness issue (beware of “criterion drift”)
- Logical that elevated EI/VI is related to elevated risk
- But Crane states that the SVP does not need to have evidenced complete dyscontrol, so many with EI/VI fall below dangerousness/likely threshold.

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## Kansas v. Crane (2002) (continued)

- Crane clarified that purpose of SVP commit. is to “distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but **typical recidivist** ...” (p. 413)

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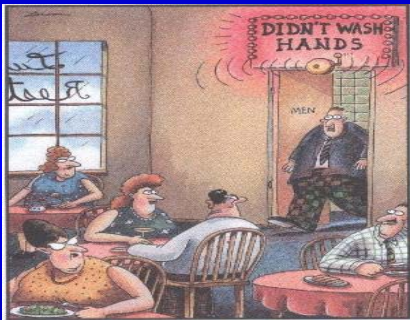
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## Crane’s “Typical Recidivist?”



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## Before we tackle “Typical,” first, what is a Recidivist?

- Recidivism is ambiguous
- How should recidivism be defined?
  - Type A Recidivism: Many SO’s prior to arrest?
  - Type B Recidivism: SO’s with detection and criminal consequences in between each one
- Case law does not speak to this
- Risk Assessment does: Type B greater correlation with FUTURE recidivism

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## Now let’s look at “Typicality”

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## Kansas v. Crane (2002) (continued)

- Are we looking to distinguish the dangerous SO (with a DMD) from the typical recidivating criminal or from the typical recidivating SO?
- Let’s see...

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## Statistical Atypicality

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## Sex Offenders as a group are already statistically distinct from the typical recidivating non-SO criminal

- Lower Persistence: Numerous large-scale studies in U.S.: SO groups exhibit LOWER recidivism rates than non-sex offenders (Langan, Schmitt & Durose, 2003; Sample and Bray, 2003; Soothill et al., 2000)
- Lower Specialization: Only 8% of rapists and child molesters have  $\geq 3$  separate SO arrests vs. nearly 1/3 of burglars were serial offenders of burglary (Miethe, Olson & Mitchell, 2006)
- So, SO as a group are already statistically distinct from the “typical” criminal recidivist

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## To distinguish with meaning

- SO as a group are already statistically not the “typical recidivist” criminal
- Thus it’s logical to conceive that Court wants distinction that is of value
  - i.e., Dangerous SO with DMD vs. Average SO
  - as opposed to Dangerous SO with DMD vs. non-SO criminal
- Makes conceptual sense. Why would the court want us to compare the guys we see with a non-SO?
- If the inmate hasn’t committed a sex offense, he wouldn’t be receiving an evaluation

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## Distinguishing the dangerous SO from the “typical” recidivating SO

- Miethe et al., 2006: Studied 10,000 male SO released in 1994 from 15 states (2/3 of all SO prisoners released in U.S. that year)
  - Langan et al., 2003 DOJ study
  - Three year study period
  - Just 2% of released rapists detected for another rape
  - 70% of both child molesters and rapists were “one timers” (lowest specialist recidivists, like murderers)
  - Just 7-8% of child molesters and rapists had  $\geq 3$  sex crimes in total careers

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## Wait...

- Isn't an offender with just one SO not a “recidivist?”
- If so, we couldn't consider a “one-timer” a “typical recidivist” for comparison with the dangerous SO

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## The “typical” SO is a recidivist, just not a sexual recidivist

- “Typical SO” is an offender with just one SO, but has many nonsexual offenses (avg. of 8 separate arrests in criminal careers per Miethe et al).
- About half (43%) of the 10,000 SO were rearrested for any crime within 3 years of their release.
- So, the “one-timer” SO's are “typical recidivists” even though not “typical sexual recidivists.”

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## Logical Statistics-Based Conclusion from Miethe et al.

- SO with  $\geq 2$  separate sex offense arrests (30% of sample) are statistically distinct from Crane's "typical recidivist"
- SO with  $\geq 3$  separate sex offense arrests (8% of sample) are extremely statistically distinct from Crane's "typical recidivist"
- Inference is they have some degree of VI (more on this later with People v. Burris)
- Per Crane in context of Miethe et al data, if not at least two separate sex offense arrests, VI conclusion is typically untenable (without other relevant data)

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## Statistical vs. Psychological Atypicality

- Miethe et al provides model for statistical atypicality
- Psychological atypicality is determined by presence of DMD and EI/VI
- So you **can** have an offender with just one SO with a DMD (and EI/VI) and find him to be distinct from the "typical recidivist"
- What would be examples of this folks?
  - Pedophile, Sexual Sadist or Schizophrenic (with sexual delusions or hallucinations commanding to sex offend) who has only acted out sexually (offended) once but is emotionally and volitionally impaired due to same mental state as during offense

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## Present Condition

- Hubbart v. Superior Court (1999): DMD must be a present condition

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## Current Condition/Recent Objective Indicia

- People v. Buffington (1999): SVPA is constitutional, in part, because the DMD must be a current condition—and there needs to be “recent objective indicia of the condition and recent objective basis for finding that the inmate is likely to reoffend”
- BUT they equated “recent objective indicia” with: DSH does screenings + two evaluators with positive findings + PCH (as opposed to any of the evaluators actually needing to find “recent objective indicia” of the condition)

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## Present Condition

- People v. Williams, 2003 (SVP case) and People v. Zapisek, 2007 (Insanity case): “present condition is the focus of a commitment proceeding, not his or her behavior under future changes” (strangely, Zapisek doesn’t cite Burris from 2002)

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## Present Condition/Recent Objective Indicia

- So, are evaluators required to find recent objective indicia of DMD?
- Since, more recent cases of Williams (2003) and Zapisek (2007) stress “present condition” with no mention of Buffington’s notion of “recent objective indicia.” and Buffington’s operationalization as mere DSH and PCH process..... Evaluators don’t need to find recent objective indicia, yet need to demonstrate present condition

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## Present Condition/Recent Objective Indicia

- In the many instances of offenders with no recent objective indicia of DMD (e.g., found with child/rape porn, admits to ongoing paraphilic fantasies/impulses/urges), what is an evaluator to do?
- Typical presumption that paraphilias tend to be chronic, lifelong conditions which don't extinguish themselves over time (without some major intervention, life event, etc.)

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## EI without VI?

- W&IC 6600 does not address this issue
- People v. Williams (2003 SVP case): Side note in Dicta: "If you took the language of the SVPA literally, a person could be confined as an SVP based on a condition that affects his emotional capacity by making the person likely to engage in sexually violent criminal behavior, even if he does not have serious difficulty in controlling his behavior. In other words, California SVPA applies literally to persons who have the capacity to refrain from committing predatory acts but choose to commit them anyway. Even though such persons are a danger to the health and safety of others, under Kansas v. Crane, they cannot be confined under the SVPA procedures." (p. 15)

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## EI without VI?

- In re Howard (2005) (juvenile "SVP" commitment extension case), court referenced Hendricks and similarly held that mental deficiency for civil commitment of SVP's must cause serious difficulty in controlling behavior.
- People v. Galindo (2006 SVP case) and People v. Bowers (2006 Insanity case) followed Howard, stating there needs to be proof of "serious difficulty in controlling behavior."

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## EI without VI?

- Conclusion: While statute is ambiguous, extant case law consistently indicates there must be VI for an SVP commitment.

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## EI without VI Pragmatics

- If EI without VI and you opine **LIKELY**
  - Criterion A: Yes
  - Criterion B: No (because EI/VI component is necessary to qualifying as a current “predisposing condition”)
  - Criterion C: No (because cannot logically be met without an active DMD with impaired volitional control)

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## VI without EI?

- Can you conceive of such a case?
  - Frontal Lobe Syndrome (FLS)
- Wouldn't a “DMD” necessarily have presence of some degree of EI?
- Doesn't the EI (and/or cognitive impairment) as part and parcel of the DMD drive the VI?

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## Conceptualizing the vague and ill-defined concepts of EI and VI

- DSM 5
  - Dxs alone ≠ SVP commit. Standard
    - EI/VI issues important to address this insufficiency
  - Cautionary Statement for Forensic Contexts
    - “Imperfect fit between questions of ultimate concern to the law and the information contained in a clinical diagnosis” (p. 25)
    - Dxs do not imply person meets legal criteria for a specified legal standard

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## DSM 5 Cautionary Statement (p. 25)

- “In most situations, the clinical diagnosis of a DSM-5 mental disorder...such as pedophilic disorder...does not imply that an individual with such a condition meets legal criteria for the presence of a mental disorder or a specified legal standard...For the latter, additional information is usually required beyond that contained in the DSM-5 diagnosis, which might include information about the individual’s functional impairments and how these impairments affect the particular abilities in question. It is precisely because impairments, abilities and disabilities vary widely within each diagnostic category that assignment of a particular diagnosis does not imply a specific level of impairment or disability.”

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## Conceptualizing the vague and ill-defined concepts of EI and VI

- ICD-10
  - EI & VI concepts not found because it’s an atheoretical compendium of nosology and nomenclature

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## Attempts to Operationally Define EI

- No published articles about EI in SVP realm
- Book chapter (Phenix & Hoberman, in press)
  - Emotional Capacity involves potentiation, elicitation, or intensification of a positive (e.g., sexual arousal, hedonistic sexual anticipation) or negative (anger, distress, sexual urge/desire) emotional state
  - Nature and intensity of affective experiences might predispose sexual offending
  - Condition/EI might limit or negate affective experiences that inhibits offending (e.g., guilt or empathy)

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## Attempts to Operationally Define VI

- Guidelines for assessing VI in the Insanity context (Hall, 1985; Giorgi-Guarnieri et al., 2002, Rachlin, Halpern, & Portnow; Rogers & Shuman, 2000)
- Unclear how generalize to SVP context and/or how congruent with Hendricks and Crane

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## Attempts to Operationally Define VI (cont.)

- No reliable/valid way to assess difficulty controlling behavior or behavioral dyscontrol (Bonnie, 1984; Janus, 2001; La Fond, 2005; Miller, Amenta, & Conroy, 2005; Rogers, 1984; Schopp, 2001)
- No reliable/valid way to distinguish offenders who have chosen to abandon control and simply violate the laws from offenders who have bona fide loss of control of themselves (Melton et al., 1997; Schopp, 1998)

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## Professional Bodies

- APA (1983): “The line between an irresistible urge and an impulse not resisted is probably no sharper than that between twilight and dark.” (p. 685)
  - Statement on the insanity defense. *Am J Psych*, 140, 681-688
- ATSA (2001) filed Amicus Curiae in Crane case arguing VI standard is “untenable...meaningless...and unworkable...and has been largely rejected by both medical and legal professions.”

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## What to do with the inherent ambiguity with VI construct?

- Abstain? (Mercado, Schopp & Bornstein, 2005)
- Crane: Abstained from providing explicit VI standard, but: “In cases where lack of control is at issue, inability to control bx will not be demonstrable with mathematical precision.”
- SVP examiners commissioned to answer the legal questions and should be well-suited to do so

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## Neuropsychological Approach

- Impulsivity and Impaired Decision Making (Winsmann, 2012).
- But many who have high VI show sophisticated SO planning (e.g., Grooming of victim)
- Using neurological deficits/neurological correlates of psychopathology to measure VI (Joyal, Black & Dassylva, 2007; Joyal, Plante-Beaulieu & de Chanterac, 2013; Miller et al., 2005; Winsmann, 2012).
- But neuro typically inapplicable to dynamics of sex offending

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## Other Attempts at Defining VI

- Literal Interpretation: Inability to direct movement through decision (Schopp, 1991)
- Volition="capacity to make choices, form goals, develop, implement, evaluate and revise plans to achieve those goals" (Hart and Kropp, 2008)
- Logic: If choices are restricted by compulsivity for some bx (e.g., molesting, raping), there is some VI.

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## More Attempts at Defining VI

- Failed efforts at resisting impulses (Rogers and Shuman, 2000)
- Opposite Perspective: Control evidenced by stimulus control (Hall, 1985)
  - Change the availability of a stimulus
  - Doing something else
  - Example: Thought Stopping
  - Example: Avoiding Paraphilic Stimuli

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## Doren (2002) and VI

- Impaired ability to learn from repeated negative consequences = VI
- A paraphiliac who experiences illegal sex bx as only realistic way of achieving sexual gratification=VI
- VI SO desire for illicit sex "overwhelms ability to consider various options and consequences. The strength of this desire, although not "irresistible"... becomes the basis for his deciding to sacrifice concerns for the consequences of his actions to himself and others. It is not the desire per se but the strength of the desire relative to other actively considered options"(p. 17)

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## Simon (IJLP, in press)

- “If the individual is not likely to appropriately respond to the fear, protests, and resistance of his victims (e.g., due to empathy deficits) or have sufficient cognitive priority (e.g., due to strength of sexually deviant urges) of the legal consequences of his illicit sexual behavior to prohibit him from engaging in it, the individual would have some degree of EI/VI.”

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## Limited Empirical Studies of EI and VI

- No published articles of empirical studies of EI in SVP realm
- VI Vignette Study #1: 66% of raters did NOT opine that the predator was unable to control conduct (Mercado, Pearce, and Schopp, 2002)
- But VI decision was unrelated to ultimate commitment opinion! Should be strong relationship between the two.

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## Limited Empirical Studies of EI and VI

- VI Vignette Study #2: Raters more likely to find lack of control if: Verbalized Dyscontrol; Hx of pedophilic conduct; viewed in SVP vs. Insanity context; offense not planned (Mercado, Bornstein & Schopp, 2006)
- Findings illogical: Many VI SO commit numerous offenses with high degree of sophistication, stalking, grooming, and planning
- Findings quite limited due to methodological issues (e.g., 2/3 raters “occasional” involvement with SO: gave atypically high ratings of recidivism risk)

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## Case Law on EI and VI

- Most on VI in realm of insanity defense
  - Cognitive Sphere: knowing nature of offense and that it was wrong). M’Naghten, 1843 and American Law Institute (ALI) “capacity to appreciate criminality of his conduct or to conform to the requirements of the law”
  - Impulsivity Sphere: Parsons v. State, 1886: “Irresistible Impulse.”

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## Case Law on EI/VI in SVP realm

- Hendricks and Crane (discussed earlier). Crane (2002) abstained from giving VI standard but stressed: “Safeguards of human liberty in the area of mental illness and the law are not always best enforced through precise bright-line rules.”

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## Series of VI court decisions in Minnesota (Mercado et al., 2005)

- Constant/Total lack of control (LOC) not necessary
- Repeated misconduct despite negative consequences
- LOC not limited to MR, Dementia, Brain Damage, Psychosis, Sleep Walking, or Seizures
- VI evidenced by lack of insight into offender’s problem or entrenched belief about acceptability of sex with minors
- Offense Planning handled contradictorily by courts
- Many unpublished cases, and jurisdiction-specific.

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## California Case Law: People v. Burris (2002)

- A recidivist violent sex offender who, due to a mental disorder, is unlikely to be deterred by the risk of criminal punishment lacks control in the requisite sense
  - This is logically established by history of offending, followed by detection (and criminal consequences), followed by more offending
  - If no history of recidivating, VI conclusion is typically untenable (consist. with Miethe data)

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## California Case Law: People v. Burris (2002)

1. An individual who does not want to sexually offend, feels remorse after doing so, yet continues to do so anyway lacks control (ego dystonic)
2. An individual who does want to sexually offend, feels no remorse after doing so, yet continues to sexually offend despite having been criminally punished for prior sex offenses, also lacks control (ego syntonic)

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## Burris and EI

- An offender who chooses to reoffend because, emotionally or cognitively, s/he has a “defective understanding or appreciation” of the consequences lacks control
- Cognitive Realm: Intellectually deficient, psychotic, etc.
  - Emotional Realm: Those with such problems in empathy that render the individual so out of touch with the victim that s/he is unable to inhibit deviant sexual arousal/impulses and acts out on the victim

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## Questions so far?

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## Summary so far

- DSM and ICD do not guide; available insanity-based conceptions, logic-based conceptions and case law are helpful, yet limited in scope
- How can we bridge the gap between these relatively undefined legal concepts and a depth-based understanding of the human mind and bx?

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## Bridging the Gap with Psychoanalytic Principles

- Purpose: Provide not greater concreteness but theory-based broadness through richer and deeper understanding of internal dynamics of the sex offender of study
- Freud, Freud-bashing, and psychoanalysis beyond Freud
- SO Cognitive Distortions (Gannon et al, 2006) rooted in disturbance at depth level of intrapsychic dynamics and functioning

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## Psychoanalytic Concepts Relevant to Assessing for EI & VI

- Transference
- Repetition Compulsion (RC)
- Fixation
- Cathexis
- Regression
- Identification with the Aggressor (IWA)
- Loss of Possession of Self (LOPS)

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## Transference

- Childhood feelings, dynamics, relational positions, etc. that get transferred onto and re-experienced with current day people, distorting contact with reality
- Example: Individuals who re-enact and re-experience their past sexual victimization and trauma by offending onto a victim of their choice

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## Repetition Compulsion

- Repeat past trauma to keep it repressed (Freud, 1914; 1922)
- The victim who did not integrate the experienced trauma was “obliged to repeat the repressed material as a contemporary experience, instead of, as the physician would prefer to see, remembering it as something belonging to the past.” (Freud, 1920)
- Repression is central to the theory

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## Support of Repression

While verbal memory of early childhood trauma is often not present, the traumatic memories exist as implicit memories and can get acted out later in life without the individual’s actual, verbal memory of the trauma.

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## Repression Study (Terr, 1988)

- 20 children with documented hx of early childhood trauma (prior to age 2.5 years)
- None could give verbal descriptions of the trauma
- 18/20 (90%) demonstrated in bx and play evidence of traumatic memory
- They re-enacted traumatic events with great accuracy and expressed fears specifically related to the traumatic events
- e.g.: Child molested by babysitter in first two years of life. At age 5, no memory of name of babysitter, and denied knowledge or memory of having been molested
- Yet enacted in his play scenes that exactly duplicated a pornographic movie made by the perpetrating babysitter

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## More Repression Studies

- Normal play is easy, high spirited, bubbly vs. traumatized children's play is obsessively repeated, involving "forbidden games," and often so literal that it's easy for an observer to guess the trauma with few other clues (Terr, 1990)
- Study of 100 child molesters: 30% admitted sexual trauma in early development; they duplicated in age of victim and type of sex act the form of their own victimization (Groth, 1979)

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## Neuropsychology of Trauma

- Traumatic memories encoded differently
- During trauma (with high SNS arousal), linguistic memory encoding is deactivated, and CNS regresses to sensory and iconic forms of memory from early (preverbal) childhood, which may predispose compulsive repetition of the past
- Some may get hooked on bolus of endogenous opiates released during each re-enactment of the trauma (van Der Kolk, 1989)

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## Control Mastery Theory of Repression (Weiss & Sampson, 1986)

- Individual repeats in UCS attempt to work through past trauma—gain control and master helplessness and terror
- Hoping for a more successful resolution, yet typically repeating the trauma
- Consistent with Janet's (1919) thesis that if the individual "assimilates and liquidates" the trauma, there is a restoration of sense of efficacy, power and feeling of triumph.
- So, the traumatized person makes continual efforts to adapt to overwhelming helplessness experienced during time of trauma by repeating and re-experiencing it in the present (van der Kolk and van der Hart, 1989)

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## Repetition Compulsion

- Bx re-enactments: Can play role of victim or victimizer.
- Abused males tend to IWA and go on to victimize others
- Adult women sexually abused as children: higher risk of becoming prostitutes, and few make the conscious connection between past abuse and their later prostitution, drug abuse and suicide attempts (Finkelhor & Browne, 1984; Russell, 1986; Silbert & Pines, 1981)

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## Repetition Compulsion (of repeating the victimization experience)

- Women with h/o childhood incest 2X likely to report later incidents of rape or attempted rape after age 14
- Father-daughter incest victims 4X more likely to be asked to pose for pornography
- Domestically abused women are 2X more likely to report unwanted sexual advances by unrelated authority figure (Russell, 1986)

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## Repetition Compulsion (of repeating the victimization experience)

- Masochistically turning the aggression inward
- Higher incidence among those abused in childhood later in life of self-mutilation (cutting, biting, burning, head-banging), self-starvation, and repeated surgeries (Graf & Mallin, 1967; Green, 1978, 1980; Pattison & Kahan, 1983; Simpson & Porter, 1981; van der Kolk, 1989)
- Abused males tend to go on to victimize others, but females higher tendency to date or marry abusive men, thereby allowing offspring to be abused, which re-enacts their own past trauma (Carmen, Reiker & Mills, 1984; Jaffe et al., 1986)

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## Meta-theory (Simon, IJLP, in press)

- Theories of RC, memory encoding, and control mastery are not mutually exclusive
- Traumatic experiences may be encoded into memory in a regressive form, and some individuals may go on to compulsively repeat past trauma due to some combination of neuropsych mechanisms and wish to repress, master and control helplessness associated with past trauma

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## Repetition Compulsion to Traumatize

- Only small percentage of SO recidivate
- What may distinguish the typical sex offender who may offend only once from repeated recidivists is, in part, strength of repetition compulsion
- Greater degree of repetition compulsion, greater degree of volitional impairment

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## Subjective data suggesting repetition compulsion

- Subjective Experience of Offending
  - “I just can’t seem to control myself”
  - “I need help”
  - “I felt driven by a force I can’t explain (or control)”
  - “I don’t know what keeps getting into me”
  - “I wasn’t myself”
  - “It feels like something just comes over me”
- Not to be considered in isolation or taken at face value
  - Potential to be minimized to avoid SVP commitment
  - Potential to be exaggerated initially to avoid culpability and/or later to achieve SVP commitment

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## Fixation, Cathexis and Regression

(Freud, 1905)

- Fixation is degree of psychological energy (cathexis) that gets attached and stuck to a neutral person, object, idea or particular phase of psychosexual development
- Freud's Advancing Army Analogy
- Cathect more psychology energy at stages with most tension, conflict and trauma
- Fixation points create vulnerability to regression
- Victim of sex abuse can develop fixation to particular stage or psychosexual experience, resulting later in repeated acting out
- Supported by animal studies—animals return to earlier behavioral patterns when under high stress (Kraemer, 1985; and Mitchell, Osborne & O'Boyle, 1985)

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## Fixation and EI & VI

- Tie to the past fixates the individual to compulsive bx
- Fixation to stages of psychosexual development, modes/types of psychosexual experience, primary identifications
- Extent of fixations are one indication of extent of EI

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## Fixation in Pedophiles

- Pedophilia theorized to involve fixation at oedipal but more typically pre-oedipal (birth to 3) conflicts (oral, anal and genital stages) (Gillespie, 1967; Socarides, 2004)
- Psych Testing: Pedophile is orally fixated, extremely dependent with no clear sense of self (Kurland, 1960)

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## Fixation in Pedophiles

- Arrested psychological development and emotional immaturity (Freud, 1927; Groth, 1979; Toobert, Bartelme & Jones, 1959; Panton, 1978)
- Fixates on pre-pubescent objects b/c are at his emotional level (Groth & Birnbaum, 1978; Groth, 1979; Hammer & Glueck, 1957)
- Sexual perversions are fixations at early level of psychosexual development (Freud 1920, Allen, 1959, 1962)

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## Fixation and EI

- Janet (1911): Traumatized can become so fixated on the trauma that it's as if their personality development has stopped at a certain point and cannot expand anymore by the addition or assimilation of new elements.
- So, extent of fixations are one indication of extent of EI
- Being able to repeatedly maintain sexual arousal with prepubescent children (or non-consenting adults) seems to be logical indication of presence of some degree of emotional impairment

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## Empirical Support for Fixation Thesis

- Pedophiles: Low SE, feelings of inadequacy, insecurity, fear of heterosexual failure, and motivated to satisfy sexual needs at an immature level of sexual development
- Demonstrated via Objective Testing/MMPI & Clinical Studies (Cohen, Seghorn and Calmes, 1969; Fitch, 1962; Panton, 1978; Toobert, Bartelme & Jones, 1959)

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## Empirical Support for Fixation Thesis

- Projective Studies (e.g., Rorschach, TAT, Bender) show Pedophiles: psychologically immature, regressed, lacking in SE, exhibiting stronger dependency needs, greater feelings of phallic inadequacy) (e.g., Hammer & Glueck, 1957; Peters, 1976; Stricker, 1967)

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## Hammer (1957)

- TAT, Blacky, Rorschach and Bender Gestalt to 60 Sing Sing inmates
- 3 psychologists gave blind global ratings of degree of feelings of castration and phallic inadequacy
- Sex offenders received higher ratings on these variables than 21 non-sex offenders
- Provides some evidence of fixation related to sex offenders in general

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## Fixated vs. Regressive Pedophiles

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## Fixated Pedophiles

- Regression from Oedipal Complex and fixation at pre-oedipal stages of development (e.g., Fenichel, 1945; Freud, 1927; Groth, 1979; Socarides, 2004)
- Preferential (Cohen et al., 1969; Groth & Birnbaum, 1978)
- Committed Opportunity Maker (Wortley & Smallbone, 2006)
- High Fixation/Low Social Competence (Knight & King, 2012)
- “Pure” Pedophiles/Pathway 5 (Ward & Siegert, 2002)
- Persistent, compulsive and continual attraction to child victims (Terry & Tallon, 2004)

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## Fixated Pedophiles (cont.)

- Typical Offenses: Active grooming, Actively seeking suitable targets, indoctrinate victims into sexuality, actively create opportunities for sex, “immature” forms of sexual behavior such as touching, fondling, and caressing, Lack physical force, and involve male stranger victims (Burgess et al., 1978; Cohen et al., 1969; Lanning, 2010; Lang et al., 1988; Wortley & Smallbone, 2006)
- Motive is primarily sexual in nature (Ward & Keenan, 1999)
- They tend to show deviant sexual arousal, are often simultaneously involved with multiple victims, have a large number of victims, and are more likely to commit future sex offenses (Bennell et al., 2001; Lanning, 2010; Looman et al., 2001; Prentky et al., 1997)

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## Regressive Pedophiles

- Regressive Pedophile: Temporary retreat from adult sexuality to less threatening infantile sexual-object choice
  - Regressed (Burgess et al., 1978)
  - Situational (Wortley & Smallbone, 2006)
  - Intimacy Deficits/Pathway 1 (Ward & Siegert, 2002)

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## Regressive Pedophiles (cont.)

- Victim chosen as alternative to age-appropriate partner as “pseudo adult” (Finkelhor, 1984; Ward & Siegert, 2002)
- More mature sexual behaviors (e.g., oral cop.) (Lang et al., 1988)
- Motive is primarily non-paraphilic, and sexual rather than aggressive (Ward & Siegert, 2002)
- Typically molest family members (Lanning, 2010) and use bribes or exploitation of natural trust (Herman, 1981)
- Often multiple instances of offending over length of time (Tormes, 1969; Wortley & Smallbone, 2006)
- Less likely to persist after detection/lower recidivism (Wortley & Smallbone, 2006)

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## Fixated vs. Regressive Pedophiles

- Also, from a risk standpoint, evidence of fixation (and sexualized aggression, but not regression or criminality) in Crime Scene behaviors predicted sexual recidivism above and beyond (incrementally valid) Static 99 score (Lehmann, Goodwill, Hanson & Dahle, 2014)
- Sum: Greater the degree of pedophilic fixation, the greater degree of EI/VI

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## Fixation in Antisocial/Psychopathic Individuals

- Psychopathy considered type of “Moral Insanity” (Pritchard, 1835, Whitlock, 1982)
- Psychopathy (Cleckley, 1941)
  - Problem experiencing genuine emotions = EI
  - “grave form of psychopathology that rivals schizophrenia in depth of impairment...and gives ready expression to virtually any response inclination”=VI
- Degree of EI can be causally related to degree of VI

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## Numerous Fixations in Antisocial/Psychopathic Individuals

- Fixation to pre-oedipal: Not wanting to grow up and take responsibility in the world
- Fixation to oedipal: Being above the rules as a relic of being "on top" of rival father
- Fixation to Identification with a psychopathic object from the past
- Greater degree of psychosexual fixation, and greater degree of antisocial drive, the greater degree of EI & VI

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## Fixation in Substance Abusers

- Oral Fixation (some degree of EI)
- Degree of addiction as an indicator of degree of VI (e.g., "I need it and just can't stop")
- National & International Samples: 30-50% of child molesters had histories of alcoholism and/or using alcohol at the time of the offense (Aarens et al., 1978; Rada, 1976; Wilschke, 1967)

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## Fixation in manic and psychotic individuals

- Mania is a fixation to an internal object
  - Degree of mania is related to degree of EI and VI
- Psychotic sex offenders (e.g., due to erotomanic delusions, command hallucinations) (God of sex; devil shooting out of penis and only saved by angelic female victims)
  - Degree of impairment from reality is one measure of degree of VI and/or EI

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## Actuarial Proxies of Fixation and Repetition Compulsion

- Static 99R: # of prior sex offenses
- Static 2002R: discreet SO sentencing occasions; ratio of SO sentencing occasions to offender's current age; presence of both juvenile SO arrest and separate SO conviction as adult
- MnSOST-R: convictions for  $\geq 2$  SO victims; years of SO history
- MnSOST III: # of SO sentences
- Increased frequency of detected SO predicts recidivism, but moderating variable is compulsivity and VI

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## Other Behavioral Proxies of Fixation and Compulsion (VI)

- Rapidity of offending
- Total # of SO victims in offender's lifetime
- Years SO behavior and fantasies have transpired
- Offending when high likelihood of detection (e.g., broad daylight, correctional settings, victims who will willingly report them etc.)

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## Bx Indicators of VI (Rogers & Shuman, 2005)

- Disregard for personal consequences
- Incapacity for delay
- Lack of capacity for meaningful choice
- Chronicity
  
- These are proxies for fixation
- Make EI/VI conclusion based on relative strength of a particular indicator and/or presence of multiple indicators (i.e., convergent validity)

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## Back to Miethe et al 2006 data

- Distinguished small subset of those who demonstrate highest degree of fixation and compulsion to sex offending, thus VI (and c/w Burris case law)
- As # of known victims and time span when offenses were committed increases, statistically abnormality increases, and leads to greater confidence in inferences about degree of fixation/compulsion, and thus VI

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## Identification with the Aggressor (IWA: Anna Freud, 1946)

- Identification: The psychological process of assimilating an aspect, attribute or property of the other.
- IWA: Ego defends itself by allowing replacement of fear and helplessness with sense of omnipotence
- Stockholm/Helsinki Syndrome (Fabrique et al., 2007; Dutton and Painter, 1981; and Mackenzie, 2004)
- One specific variant of Repetition Compulsion (a mechanical, operational conception of RC at the level of the introject)

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## Empirical Studies Supporting IWA

- 12/14 juveniles sentenced to death for murder had been physically abused brutally, and 5/14 had experienced familial sodomy (Lewis et al., 1988)
- $\geq 50\%$  of incarcerated pedophiles (and  $\frac{1}{4}$  of rapists) admit childhood sexual abuse (Bard et al., 1987; Earls et al., 1984)
- 60% of pedophiles (vs. 4% of controls) reported adult sexual advances during childhood, and 75% of pedophiles (vs. 22% of controls) reported a first sexual encounter prior to age 14 (Cohen et al., 2002)

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## More Studies Supporting IWA

- Those sexually abused prior to age 16 (vs. not) offended against sign. younger victims and had more indicators of pedophilic interest (Nunes et al., 2013)
- Meta-analysis #1: Adolescent sex offenders are 4.8 times more likely to have had childhood sexual abuse (and 1.6 X more likely to have hx of physical abuse) than adolescent controls (Seto and Lalumiere, 2010)

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## More Studies Supporting IWA

- Meta-Analysis #2: Adult Sex Offenders are 3.4 X more likely to have h/o having been sexually (but not physically) during childhood (Jespersen et al., 2009)
- These studies show indirect support for IWA and RC among some sex offenders

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## Reconciling the Conundrum (Simon, IJLP, in press)

- Sex Abuse Hx strongly related to onset of sex offending
- Sex Abuse Hx per se is not a risk factor for SO recidivism
- What may distinguish the repeat from non-repeat offender is not the h/o sex abuse per se, but the degree of trauma experienced, the lack of external coping resources, and extent individual resorted to extreme psych defenses in coping with the trauma
- Degree of this fixation and strength of IWA can be indicator of EI and VI

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## Degree of Trauma/Lack of Coping Resources Thesis

- Association between attachment problems and caregiver unresponsivity and future sexual aggression (McCormack et al., 2002, Ward et al., 1996, Ward et al., 1997)
- What predicts worse morbidity and greater future sexual aggression among sexually abused children: caregiver inconstancy, age of onset of abuse, closer relationship to perpetrator, duration of abuse, and highly invasive abuse (Prentky et al, 1989)

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## What about SO with no history of molest?

- Under-reporting bias leads to conclusion that well more than half have such hx
- A RC for recurrent sex offending can exist with individuals who've been emotionally molested during childhood (e.g., Soul Murder—Shengold (1978)
- General support of this from association between attachment problems/caregiver unresponsivity (potential proxies for emotional molestation)—a reversal of parent/caregiver and child/care receiver roles) and future sexual aggression

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## Fixation and IWA in Sexual Sadists and Paraphilic Rapists

- Both have need to dominate and control victim, and lack of empathy for victim, suggesting Ident with some past aggressor and fixation to that Ident and type of psychosexual experience
- Mobilizing into powerful position of aggressor, repeatedly enacting past trauma in UCS attempt to repress and/or master past traumatic feelings

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## Childhood Physical Abuse and Later Rape

- 900 children followed with h/o sex or physical abuse prior to age 12.
- Physical abuse hx much more (than sex abuse hx) related to future rape/sodomy crimes (Widom and Ames, 1994)

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## Childhood Physical Abuse and Later Rape

- Meta-Analysis: SO against adult victims less likely to have been sex abused than SO against children, but more likely to have been physically abused (Jespersion et al, 2009)
- Suggests some severely antisocial, sexual sadists, and coercive paraphiliacs engaged in IWA (a sadistic aggressor), and re-enact trauma sadistically in sexual realm
- Again, Crime Scene Analysis showed evidence of fixation and sexualized aggression (but not regression or criminality) to predict sexual recidivism over and above Static 99 score (Lehmann et al., 2014)

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## Some confounding variables

- Conceivable that many male victims feel more comfortable admitting physical vs. sexual abuse (so physically abused victim cohort may have under-reported actual sex abuse)
- Male victims may be more likely to remember physical abuse and more likely to repress sexual abuse
- Survivors of sexual abuse who've repressed it are perhaps more likely to re-enact it behaviorally than those who remember it and haven't repressed it

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## IWA in APD/psychopaths

- Individuals with no paraphilia but strong antisocial drive resulting in compulsive sex and non-sex crimes
- Due to strong identifications with aggressors of the past (see Meloy, 1988 for developmental origins of APD/psychopathy)
- Whether APD or Paraphiliac, degree of fixation and strength of IWA can be indicator of EI/VI

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## Loss of Possession of Self (LOPS): Some terms

- Intrapsychic: Internal cognitive/emotional/identity representations of self and others
- Introject: Psychological structure of the parent/other
- Compulsion: Bx driven by something Ego-Alien (entity, identification, or introject experienced as distinct from self)
- Extent of LOPS to internal object, a RC necessarily involves some degree of EI and VI
- Determination relies heavily on clinical judgment

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## LOPS in Mania and Psychosis

- Flight from depressive state, unable to mourn loss of other as separate, and experiencing merger/union with the object. Can involve psychosis.
- Extent of insufficient individuation from internal objects (whether paraphilic, psychopathic, or manifested in affective/psychotic realms) will indicate LOPS, thus rendering EI and VI
- Example: Individual who merged with sexually seductive mother to repeatedly act sexually seductive with little boys, carrying forth "as his mother"

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## Kohut (1971)

- Selfobject: Coined to capture lack of boundaries between introjected other and self
- Selfobject: Objects, persons or activities that complete self and are necessary for normal functioning
- Repeated or systemic empathic parental failures lead to selfobject deficits (core of most psychopathology)

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## Idealization is at the core

- Using the victim to replace inadequate archaic selfobjects and avert disintegration of self—sexual aspect of pedophilic bx is means to keep self from falling apart (Juda, 2004; Kohut, 1978)
- The “psychopathological organization that dominates the pedophile’s inner world originates from a delusional nucleus in which a child is idealized and worshipped in place of the parents. This object promises all manner of pleasure and happiness.” (de Masi, 2007)
- Finding “God” in the idealized/idealizing child in the face of intra-psyche disintegration

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## Lack of Empathy

- If victim is not experienced as separate but as “God” or entity to fulfill one’s needs, this impairs ability to empathize with victim = one form of EI
- Would potentially apply to any type of offender
- Consistent with Burris (2002): if perpetrator chooses to reoffend because, emotionally or cognitively, s/he has a “defective understanding or appreciation” of the consequences lacks control

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## But we learned that victim empathy does not predict SO recidivism!

- Conceptual Drift: Expected correlation between EI/VI and recidivism, but not same concepts.
- To wit, an individual can have some EI and not sexually reoffend

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## Empathy not predictive of SO recidivism? Do we trust the data?

- Hanson and Busierre meta-analysis (1998) only reviewed 3 studies that found no rel between victim empathy and SO recidivism. Fourth study cited found a rel, at least in short-term
- Obvious motivation of SO to claim victim empathy in attempt to decrease criminal consequences, etc. Confounded data. Perhaps claimed victim empathy has no rel with recidivism, but genuine empathy does?
- Intuitive sense for correlation between lack of empathy and recidivism

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## Lack of Empathy and Disinhibition

- Lack of Empathy impairs and/or forecloses ability to disinhibit deviant sexual arousal (e.g., de Silva, 2007; Knight & Thornton, 2011; Knight & Sims-Knight, 2011; Wilson, 201)
- Degree of empathic failures is logically related to strength of fixation, and thus one measure of EI (and VI to extent he acts out sexual deviance)

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## Meta-theoretical Level

- View of EI incorporating RC and Kohut's Self Psychology (Stolorow & Lachmann, 1980)
  - “When perverse sexual fantasies and acts occur in developmentally arrested individuals in whom self and object representations are insufficiently structuralized, this function of early psychosexual experience may be revived in order to shore up a precarious and imperiled representational world...”

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## Meta-theoretical Level (RC from a self-psychology point of view)

- “...In such cases, it is not contrary to what Freud (1905) maintained, the erotic experience per se that has been fixated and then regressively re-activated; instead, it is the early infantile functions of the erotic experience that is retained and regressively relied upon—its function in maintaining the structural cohesion and stability of crumbling, fragmenting, disintegrating self and object representations.”

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## Kohut (1978) and addiction

- Some individuals can have addiction-like praise-seeking or addiction-like search for idealized selfobjects.
- Both can be sexualized and lead to different forms of perversions
- Addiction-like searching can suggest VI

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## Some Protective Variables (Is he the “same guy” as before?)

- **Age:** Examiner should consider effect age has had (e.g., emotional maturation and hormonal differences) on offender’s degree of fixation, RC, IWA and LOPS in assessing for EI and VI
- **Role of Tx:** Analysis of Tx effects (and any other variables that may have changed intrapsychic world). Supported by U.S. v. Antone (2014) (he was ultimately considered “rehabilitated”)
- Hopefully Tx helped individual work through trauma of past (if indicated), and lessen pathologic cathexis, degree of IWA, and psychosexual and/or paraphilic fixation

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## Conclusion

- EI & VI are ill-defined by SVP statute, case law, logical constructions and limited empirical studies
- Psychoanalytic principles provide useful heuristic framework to bridge gap between those vague concepts and what is known from depth psychology
- Greater theory-based abstractness helps examiner formulate judgment about impairment through attainment of richer and deeper understanding of internal dynamics of individual sex offender of study

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## Questions? Comments?

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