Paul Simpson, Ed.D.

Licensed Psychologist
Specializing in Criminal Forensics
Listed in the National Register of Psychologists

2292 W. Magee Rd., #220, Tucson, AZ 85742
Office (520) 355-1000 / FAX (520) 355-2000
Doc@ArizonaForensics.com / www.ArizonaForensics.com

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Capt. James T. Kirk, USAF

RE: Potential sentencing testimony in the trial of A1C John Doe

Greetings Capt. Kirk:

You have explained to me that your client is charged with 24 specifications of communicating a threat, 13 specifications of possession of child pornography, 4 specifications of distribution of child pornography, 4 specifications of production of child pornography, and 12 specifications of Indecent Visual Recording. I understand that you currently expect your client to plead not guilty to all charges and specifications but that you also need to be prepared for the possibility of a sentencing hearing.

You have asked me "*What issues in this court-martial would warrant providing education to the trier-of-fact?*" There are at least two primary issues that I have identified based on the information you have provided to me:

1) Hebephilia vs. Pedophilia
2) Adolescent Girls and Age-Discordant Sexual Relationships

I. Hebephilia vs. Pedophilia

"*Hebephilia*" refers to sexual attraction to post-pubescent minors age 11-14 on the Tanner Scale and "*Ephebephilia*" which is sexual interest to those in later adolescence, approximately 15–19 years old on the Tanner Scale. "*Pedophilia*" refers to sexual attraction to pre-pubescent children. There are strong and consistent findings in the research literature that reveal:

1. Attraction to post-pubescent adolescents is normal for healthy adult males. It is a matter of biology. The "*primitive brain*" (mesolimbic system) in a healthy male identifies primary and secondary body characteristics in a pubescent female that signal she is capable of bearing children. The primitive brain has no sense of morality – it is pure primitive instinct. It is the job of the "*thinking brain*" (neocortex) to interrupt primitive impulse. Everyone experiences "*inhibitory struggle*" on a regular basis – whether to eat the extra donut, sleep past the alarm clock, drink too much at the bar after work, etc. This contrasting tension between our "two brains" is the basis for civilized behavior in civilized society.
2. In his alleged actions against the minor in this case, A1C VanValkenburgh would have failed to engage the inhibitory functions of his thinking brain, i.e. he would have acted impulsively rather than think through the consequences of his decisions. It is critical to understand these conditions do not excuse his alleged actions against his victim. But it does offer a better understanding as to why someone with no criminal history would commit these actions.
3. The distinction of *hebephilia* vs. *pedophilia* has important implications for recovery and future risk. Hebephilic actions involve "*normal*" impulse that are not successfully inhibited by the neocortex. These actions do not require defect in personality or abnormal psychological functioning. They <u>do</u> suggest poor impulse control. In contrast, pedophilia is a biologically abnormal impulse that can involve significant defect in personality and psychological health. Notice that the DSM-5 has a diagnostic category for pedophilia but does <u>not</u> identify hebephilia as a mental disorder. Research reveals someone struggling with hebephilia is more responsive to treatment as compared to a pedophile. With proper treatment, someone with hebephilia also has a better prognosis against future relapse.

II. Adolescent Girls and Age-Discordant Sexual Relationships

A second issue to educate the members/judge regarding is research concerning adolescent girls and age-discordant relationships. For several years I provided a series of evening parent-talks at middle schools around the country on what pre-teens and teens are doing online (and how to better protect them). Something I emphasized to the parents I repeat here as well. We don't like to think of teenagers, particularly girls, as sexual beings who can be sexually motivated in their actions. Intellectually we understand they are sexual beings, but emotionally we tend to consider them as children who lack sexual motive. The scientific research clearly tells us otherwise.

It is critical to understand I am not blaming the identified victim in this case. As a father and grandfather, I can assure you I am not an advocate of sexual relationships between children/adolescents and adults. I am also clear in recognizing that a child or adolescent is not legally, emotionally, or developmentally capable of consenting to a sexual relationship with an adult. The adult, and only the adult, is responsible for a sexual event.

However, as a scientist, I also recognize that adolescents can have a variety of motivations in pursuing sexual relationships with peers or adults. Attention, affection, affirmation, excitement – all of these can be motivations for engaging in sexual behaviors.

To repeat, recognizing sexual motivations within adolescents does not excuse an adult's sexual actions, grooming behaviors, or their legal and moral duty to protect the adolescent. But it can help the trier-of-fact to better understand how a sexual relationship can be reciprocated between an adolescent and an adult.

Here are 5 research abstracts regarding the motivations of teenage girls who engaged sexually with older men.

Recalled explanations for adolescent girls' engagement in age-discordant sexual relationships.
Cort, Natalie A., Senn, Theresa E., Carey, Michael P., Braksmajer, Amy.
AIDS and Behavior, Vol 20(6), Jun, 2016. pp. 1327-1333.
Abstract:

Age-discordant sexual relationships are associated with negative sexual health outcomes for adolescent females. We were particularly interested in females' motivations for engaging in these relationships, and in contextual factors that increase receptivity to age-discordant relationships in the United States (U.S.). However, recent research addressing this topic in the U.S. has been sparse. To address this gap in the literature, we recruited 15 women (*Mdn* age = 26 years; 93 % African American) from an urban, publicly funded sexually transmitted disease clinic to qualitative interviews. Reasons given by women for their involvement in age-discordant sexual relationships as adolescents included: (a) desire for an actively engaged father figure, (b) to obtain material support, (c) to escape from a troubled home life, and (d) to express independence and maturity. Thus, familial, economic, and developmental factors motivate socioeconomically disadvantaged adolescent females to enter into age-discordant sexual relationships. Efforts to reduce females' participation in these relationships will need to address socioeconomic vulnerability and family relationships.

Measurement of motivations for and against sexual behavior.
Patrick, Megan E., Maggs, Jennifer L., Cooper, M. Lynne, Lee, Christine M.
Assessment, Vol 18(4), Dec, 2011. pp. 502-516.
Abstract:

A multidimensional measure assessing distinct motivations for and against sex was shown to be reliable, valid, and configurally invariant among incoming first-year college students. Three Motivations Against Sex Questionnaire subscales were developed to measure motivations *against* sexual behavior (Values, Health, Not Ready) to complement and extend a set of Sexual Motivations Scale–Revised subscales assessing motivations for sexual behavior (Intimacy, Enhancement, Coping). Participants were surveyed the summer prior to college (*N* = 1,653; 58.4% female).

Exploratory factor analysis on a random one quarter of respondents supported the hypothesized factors. Multigroup confirmatory factor analysis demonstrated good overall fit to the data and configural invariance across gender and ethnicity and across lifetime sexual experience. Motivations were associated with lifetime oral and penetrative sexual behaviors. This combined measure may be used for identifying motivations, predicting behaviors, and tailoring motivational interventions for sexual health among adolescents and young adults.

Motivational pursuits in the context of human sexual relationships.
Cooper, M. Lynne, Barber, Lindsay L., Zhaoyang, Ruixue, Talley, Amelia E.
Journal of Personality, Vol 79(6), Dec, 2011. pp. 1031-1066.
Abstract:

The current article examines how close relationships combine with individual differences in sex motives (Cooper, Shapiro, & Powers, 1998) to shape sexual experience. We first provide an overview of the motivational approach as it relates to sexual behavior and then describe 2 broad mechanisms (1 transactional, the other interactional) by which motives and relational context combine to shape behavior. Drawing on our past research, we review evidence showing that people select relationship contexts based partly on their motives and that these contexts in turn shape future motives and behavior; that partner motives shape sexual experience above and beyond one's own motives; and that both the broader relationship context and partner motives moderate the effects of one's own motives on sexual experience. We conclude that the nature of motivational pursuits cannot be adequately understood in the abstract, but rather we must take into account the relational context in which one's needs are pursued.

Defining, excusing, and justifying deviance: Teen mothers' accounts for statutory rape.
Higginson, Joanna Gregson.
Symbolic Interaction, Vol 22(1), 1999. pp. 25-44.
Abstract:

Examines the excuses and justifications used by teenage mothers to account for their involvement with older boyfriends. Data were gathered during a three-year participant-observation study of mothers enrolled in a high school program for adolescent parents. The teens who used justifications argued that their consent made their relationships non-deviant, and felt that they should not be construed as statutory rape offenses. The teens who used excuses perceived themselves as victims of their older boyfriends, and believed that statutory rape laws should be enforced with more regularity. As their relationships ended, the women who initially used justifications often shifted to excuses, directing the blame away from themselves and toward their boyfriends.

Motivations for sex and risky sexual behavior among adolescents and young adults: A functional perspective.
Cooper, M. Lynne, Shapiro, Cheryl M., Powers, Anne M.
Journal of Personality and Social Psychology, Vol 75(6), Dec, 1998. pp. 1528-1558.
Abstract:

The implications of a functionalist perspective for understanding sexual risk taking are explored. Key motivational dimensions thought to underlie human behavior (viz., approach vs. avoidance, autonomy vs. relatedness) were used to identify 4 broad domains of sexual motivations and to develop a measure of specific motives within each of these domains. Data from both college student and community samples are used to demonstrate the psychometric adequacy of these scales and to show that having sex for different reasons predicts distinctive patterns of sexual risk taking both cross-sectionally and longitudinally; that selection into specific types of sexual relationships partially mediates these effects; and that these needs may be differentially expressed, or even suppressed, depending on relationship context. Results provide strong support for the functionalist perspective on behavior and indicate that an adequate understanding of sexual risk-taking behavior must take into account the various needs and goals that such behavior can serve.

III. Demographic Risk Factors

You and I have discussed the importance of providing a risk assessment to assist the trier-of-fact in sentencing. During the past 30 years I have conducted well over 1000 evaluations for State,

Federal and Military courts. Over a span of 15 of those years I have also provided over 300 trainings for peers (psychologists, social workers, probation officers, etc.) regarding sex crimes and psychosexual evaluations. This has included a series of CLE courses for the State Bar of Arizona.

In my lectures I have emphasized the important distinctions between various sex offenses and how those differences impact risk to the community and rehabilitation potential for the offender. Listed below are common elements that increase future risk for sex offense. These items are from published, peer-reviewed research and listed in well-recognized risk actuarials (the STATIC 99R/2002R, SONAR, and SVR-20).

Personal Characteristics of an Offender

- Age
- History of long-term intimate relationships
- Social influences that support sex offending
- Attitudes that support sex offending
- Problems with general self-regulation
- Problems with sexual self-regulation
- Sexual deviancy
- Significant mental health problems
- Identified as a psychopathic deviate
- Unrealistic plans for education or career
- Negative attitude towards future counseling

Personal History

- Childhood sexual abuse
- Extensive substance abuse
- Lack of stable employment
- Suicidal / homicidal ideation
- Prior involvement with the criminal justice system
- Prior sentencing occasions for anything
- Any sentencing for non-sexual violence
- Any community supervision violation
- Juvenile arrest for sexual offense
- Prior sentencing for sexual offenses
- Accelerated rate of sex offending
- Any sentencing for non-contact sex offense
- Years out of prison prior to alleged sex offense
- "High density" sex offenses in the past

Victim Demographics

- Gender of the victim(s)
- Young, unrelated victim(s)
- Any known, unrelated victim(s), any age
- Any stranger victim(s)
- Physical harm to the victim
- Use of weapons or threats of death in sex offenses

IV. Protective Factors

In addition to elements that increase risk, a forensic evaluator also considers "*protective factors*" that lessen risk. These are research-driven findings. Here are the elements in the *Structured Assessment of PROtective Factors* (SAPROF).

Internal Items

- Intelligence
- Secure attachment in childhood
- Empathy
- Coping
- Self-control

Motivational Items

- Work
- Leisure activities
- Financial management
- Motivation for treatment
- Attitudes towards authority
- Life goals
- Medication compliance

External items

- Social network
- Intimate relationships
- Professional care
- Living circumstances
- External controls

V. General Discussion

Assistance to the accused

As described in the previous section, a forensic psychologist considers a myriad of aggravating and protective factors when conducting a sex offender risk assessment. This is borne out of years of research-driven training and experience. The subtle distinctions between a myriad of sex crimes can offer critical information to the trier-of-fact in considering sentencing for your client.

In light of this, I would offer a caution. My assistance to you in your defense of your client has important limitations. By training and ethical standards, a forensic psychologist only serves the trier-of-fact. I never testify for or against government or the defense. I never testify for or against a defendant or a complaining witness. I am an advocate for the science of psychology. The sole beneficiary of a forensic evaluation and testimony is the court. Also, I am always truthful in cross-examination.

Can defense counsel gather and present the evidence the expert would be able to develop?

I humbly submit that over three decades of professional training and psychological evaluations have provided me an opportunity to learn some things that might not be readily apparent to attorneys, juries or judges. As such, I sometimes have something to teach that is worth knowing. Attorneys and forensic psychologists have different roles and different giftings.

Government has not secured the services of any similar experts

If this case goes to sentencing, I assume that government will claim aggravating elements in its sentencing argument. Your client should be afforded the benefit of a better-informed sentencing argument from defense.

- There are any number of specifics in this case that could be argued as mitigation.
- Your client might be calculated as a low risk to reoffend based on scientific actuarials.
- The specifics of sex offender treatment programs available in-custody and while on probation can also be explored for the court's benefit. This could offer a practical argument for the court's consideration of balancing penalty with rehabilitation.

By way of closing I would summarize the following:

- A forensic psychologist considers a myriad of aggravating and protective factors when conducting a sex offender risk assessment. This is borne out of years of research-driven training and experience. This is typically beyond the scope of a defense attorney's ability to argue alone.
- The focus of the forensic psychosexual evaluation and/or testimony is solely to serve the trier-of-fact. During sentencing, both government and defense have the opportunity to question the evaluating psychologist and elicit testimony regarding aggravating or mediating factors.

Thank you for the opportunity to provide feedback on these matters. Please contact me with any questions you might have.

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Paul Simpson, Ed.D. 1 November 2021
Arizona Psychologist, #1967