

The Use of “Sex Addiction” in U. S. Legal Proceedings

David J. Ley, PhD.

Draft of a chapter from:

Prescott, D.S. & Wilson, R.J. *Very different voices: Perspectives and case studies in sexual aggression*. Holyoke, MA: NEARI Press.

Introduction

Since the early 1980s, the term “sex addiction” has been used predominantly in the United States to describe a range of different problematic sexual behaviors. Many prominent public figures have set tabloid headlines ablaze when entering a rehab clinic for sex addiction in attempt to save their marriages. Because a term takes root in popular culture, however, it does not become legitimized in any legal or clinical context any more than actors become doctors when they play those roles on television.

Numerous terms, theories, and clusters of symptoms for sex addiction fall under this umbrella concept. Archaic terms such as satyriasis and nymphomania demonstrate that the issue of sex addiction has a long-standing historical foundation. Other terms, such as sexual compulsivity, sexual impulsivity, erotomania, hyperphilia, and hypersexuality have all emerged at various times as constructs intended to describe sexual problems, without embracing the theory and implications of the concept of addiction. More often than not, when we see the term sex addiction in use, it is more likely a concatenation of symptoms for other known conditions. What is called sex addiction may often result from an established paraphilia; additional diagnostic labels of sex addiction are unwarranted, and further, may interfere in diagnosis, treatment and legal response.

The term sex addiction, however, remains the most widely used and recognized label for what is commonly described as excessive, non-paraphilic sexual behaviors, including consensual sex, masturbation, prostitution, infidelity, use of pornography, and other sexual behaviors that cause problems in individuals’ lives. Numerous publications describe in detail the many serious problems in the sex-addiction concept, and interested readers are referred to these works for a full exploration of these issues.

As a leading critic of the sex-addiction industry, and the role that this concept and treatment play in our society, I am often challenged by people who defend the concept’s value and importance. In numerous debates and publications, these supporters assert the degree to which the sex-addiction concept destigmatizes sexual behavior problems and allows people to get help. They further argue that claims of sex addiction are not and should not be an effort to avoid responsibility. When one examines the degree to which the sex-addiction concept has infiltrated the American court and legal system, however, it becomes clear that the concept of sex addiction is being used in a manner inconsistent with its lack of formal acceptance.

The legal treatment of sex addiction is especially important to be considered by clinicians who treat sexual offenders. Claims of sex addiction often arise in treatment with such individuals, and, as this chapter documents, these claims arise in legal cases, as well. In many cases, claims of sex addiction are raised in court by mental health and sex offender clinicians. This chapter intends to educate such clinicians about the risks, ethics, and dangers of claims of sex addiction in legal cases.

In the 2012 work, *The Myth of Sex Addiction*, I described the story of one of the first forensic applications of the sex-addiction concept. In the early 1980s, a prominent educator was charged with sex-related crimes, stemming from his involvement with prostitution. At trial, the man was defended by a psychiatrist who asserted that the man “was addicted to sexual gratification,” and that he was under treatment with libido-suppressing hormones. Nevertheless, the court did not endorse this defense, and the man was convicted. Thirty years later, I contacted him, and interviewed him about whether he believed that he had been addicted to sex. His words were powerful: “I do not believe I had an addiction though I know we all have compulsions and sometimes act on them impulsively without considering the consequences...What a fool I was...Ultimately, I am responsible for my own bad choices and their consequences.”¹

Over the past decades, however, sex addiction has crept into the legal system through many avenues and is treated in an uncritical fashion that assumes the validity of the concept. The following accounts detail the degree to which concepts of sex addiction are increasingly introduced into matters of criminal, civil, and administrative law.

For the purposes of this work, in which I explore the inappropriate use of the concept of sex addiction in legal and forensic settings, the most important issue is that sex addiction is not a recognized or accepted mental health diagnosis, exemplified by the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM). Under the previous edition of the DSM, DSM-IV-TR, the category of “sexual disorder not otherwise specified” included a description of “a pattern of repeated sexual relationships involving a succession of lovers who are experienced by the individual only as things to be used.” This atavistic language reflected an historical concept called “Don Juanism,” and was the last formal diagnostic vestige of credibility for the sex-addiction concept. Despite sex addiction being proposed as a diagnosis to committees and workgroups of both the DSM-IV and DSM 5, it has consistently been rejected by these groups due to a lack of scientific data and limited scientific evidence that supports its validity.²

In 2013, editors of the DSM entirely rejected sex addiction as a disorder, due to a lack of scientific evidence. The related concept, hypersexual disorder, which presented similar behaviors and problems, but without an addiction framework, was considered by the DSM 5 Committee on Sexual Disorders for inclusion as a condition worthy of future research, but was also ultimately

¹ Ley, D. (2012) *The Myth of Sex Addiction*. Rowman & Littlefield. P. 209

² D. Thompson, “The ‘Reality’ of Sex Addiction Stirs Debate,” *Healthday News*, May 12, 2010, <http://news.healingwell.com/index.php?p=news1&id=636637>; Ley, D., Prause, N & Finn, P. (2014, February). The emperor has no clothes: A review of the "pornography addiction" model. *Current Sexual Health Report*.

rejected.³ DSM 5 contains the explicit statement: “groups of repetitive behaviors, which some term *behavioral addictions*, with such subcategories as ‘sex addiction,’ ‘exercise addiction,’ or ‘shopping addiction,’ are not included because at this time there is insufficient peer-reviewed evidence to establish the diagnostic criteria and course descriptions needed to identify these behaviors as mental disorders.”⁴

Despite a lack of formal credibility to the diagnosis of sex addiction, testimony and evidence related to the concept, diagnosis, or treatment of sex addiction is increasingly present in American courts, in a variety of different ways. Administrative law, particularly relating to the actions of boards overseeing licensed professions, include growing claims of sex addiction in reference to the sexual behaviors of licensed individuals before their respective boards. In civil law, marriage and family legal cases notably include claims of sex addiction. The claims are often provided as justification for divorce and child-custody decisions. Finally, in criminal trials related to charges of sex-related crimes, claims of sex addiction often appear in the sentencing phase of trials. Cases related to these areas are presented below. All cases are drawn from legal documents and summaries in the public record. Names and locations are anonymized.

Administrative law

Medical licensing. The medical license of J., an anesthesiologist, was suspended in 2014, following his own self-report to the medical licensing board that over a period of numerous years, he had diverted drugs for his own use and had fondled the breasts of multiple female patients while they were sedated. J. self-reported this information to the board while he “voluntarily underwent long-term inpatient treatment for sex addiction and drug diversion.” The board noted that: “While respondent’s efforts to get treatment for his addiction issues and other issues is laudable, the behavior he admitted to is so egregious and harmful to patients that he cannot practice with reasonable skill and safety.”⁵

In April 2014, dentist R. met two women in a hotel room where he planned to exchange painkiller prescriptions for sexual favors from the two women. Instead, he was arrested because the authorities had become aware of the very large number of prescriptions written by the clinician. During legal proceedings, his attorney defended his client as having sex addiction that stemmed from “an undiagnosed mental illness” as well as impulse-control issues. R. was sentenced to three years in prison, and he surrendered his dental license. According to news reports, the dentist, “also a member of Alcoholics Anonymous, said he plans to get training to become an alcohol and drug counselor.”⁶

Admission to the bar. In November 2003, S., who had been dubbed “the Naked Photographer” by local press, was arrested due to his actions of the previous year. Beginning in 2002, S.

³ Ley, D., Prause, N & Finn, P. (2014, February). The emperor has no clothes: A review of the “pornography addiction” model. *Current Sexual Health Report*.

⁴ American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorders* (5th ed.). Arlington, VA: American Psychiatric Publishing. p 481.

⁵ Summary Action Order and Statement of Charges, M-2014-517. State of Washington, Department of Health)

⁶ http://www.nj.com/morris/index.ssf/2013/09/ex-roxbury_dentist_who_wrote_prescriptions_in_exchange_for_sex_gets_3-year_prison_term.html

exposed himself to females on the street and photographed their startled reactions. After arrest, he admitted that he had masturbated on some occasions during these incidents, which turned the behavior from something like a stunt or prank, to a sex crime. S. plead guilty to 53 misdemeanors and was ordered to continue with treatment, participate in 18 months of work release, and pay a fine of \$3000. As a licensed attorney, he also had to appear before the Board of Commissioners on Grievances and Discipline, which oversees such cases. S. testified to the board that each incident was "definitely an adrenalin rush or euphoria... very much like a powerful drug" and that he had not considered "what effect it could have on other people." His treating psychologist, Dr. M., diagnosed him with sex addiction and testified about his diagnosis and treatment of the attorney. However, the board was not convinced by the doctor's testimony or diagnosis. Dr. M. testified that sexual addiction was "a special case of obsessive-compulsive disorder that is characterized by a preoccupation with sexual thoughts and the compulsion to act out those thoughts." The doctor's testimony, however, did not sway the board due to his failure to adequately interpret test results that suggested that S. had shown a tendency to "look sick," the doctor's failure to refer S. for psychiatric treatment despite believing that depression had contributed to S.'s actions, and the doctor's sole reliance on S. having faithfully attended Sex Addicts Anonymous as a mitigation of his risk for relapse. Upon review of the case, the state's supreme court failed to find that sex addiction was a mitigating mental disability. S.'s license to practice law was indefinitely suspended.⁷ In March 2014, S. petitioned the state supreme court again and was able to renew his ability to practice law again, under a three-year probation.⁸

In 2009, District Attorney K. was prosecuting a man for severe domestic violence. During the trial, K. began sending sexually charged text messages to the ex-girlfriend and victim of the defendant. The messages included invitations such as, "Are you the kind of girl that likes secret contact with an older married elected DA... the riskier the better?" K. resigned in 2010 when the scandal became public. When he was prosecuted in 2012, he claimed that his sex addiction was like an eating disorder and that his untreated condition had led to him sending grossly inappropriate sexual messages to a female victim of domestic violence. In court, K. asserted that he had narcissistic personality disorder, along with chemical dependency to prescription medications, and a sexual addiction allegedly triggered by the medications. During testimony, K. argued that sex addictions were different from eating disorders only in that society does not perceive them as legitimate and stigmatizes those with sexual behavior problems, calling them "perverts." K. subsequently lost his license to practice law.⁹

Civil Law

Malpractice. J. began treatment with marriage and family therapist Dr. T., following an inpatient hospitalization for treatment of drug and alcohol addiction. Shortly after treatment began with J., Dr. T. requested that J's wife, A., also engage in individual and occasional marital therapy with Dr. T., who later began counseling the couple's two children, as well. Dr. T. described J. as a sex addict, though in court, the therapist "admitted the need to use great care in diagnosing sex

⁷ Columbus Bar Assn. v. Linnen, 2006 Ohio 5480 - Ohio: Supreme Court 2006

⁸ AP. 2014. "License Of Columbus Lawyer Who Exposed Himself Is Restored By Supreme Court"
<http://www.10tv.com/content/stories/2014/03/19/oh--naked-photographer.html>

⁹ <http://www.dailymail.co.uk/news/article-2162400/Former-Calumet-County-District-Attorney-Kenneth-Kratz-says-sex-drug-additions-sleazy-text-messages-sent-abuse-victim.html>. (URLs alone are not legit cite formats!)

addiction, using standardized screening instruments and diagnostic criteria. She testified that “[e]very patient that comes in with a sexual addiction statement of need” is given 10 screening questions and a 30-page document to fill out. Dr. T. admitted administering none of those tests to James prior to her reaching her conclusion that he was a sex addict.” Later in treatment, Dr. T. informed A. that her husband needed residential sex-addiction treatment at a facility in Mississippi, and encouraged A. to help her convince him that this treatment was actually for depression. However, when completing a telephonic pre-admission interview, J. discovered the true nature of the program and refused to attend. The couple later filed malpractice claims against Dr. T., after the therapist filed reports of child abuse and child sexual abuse against J. Investigation of the reports were unsubstantiated. The couple later divorced, and during the malpractice trial, an expert witness, “testified that Dr. T. did not meet the standard of care and that her ‘misdiagnosis and the application of wrong therapeutic errors . . . is the proximate cause for the destruction of their marriage.’”¹⁰ The malpractice suit against Dr. T. was successful, and additional licensing complaints filed against her led to restrictions being placed on her clinical license along with requirements that she complete additional training.¹¹

Product liability. In July 2013, attorney C. filed suit against computer company Apple, asserting that the company’s failure to install filtering software on its devices and to warn of the dangers of pornography, had led to his “lifelong pornography addiction.” Further, C. alleged that Apple’s negligence and his pornography addiction had led to severe emotional distress, a failed marriage, and hospitalization for treatment of his condition.¹² The following year, C. filed suit attempting to intervene in a Florida marriage equality case, seeking the right to legally marry his “porn-filled Apple computer.”¹³ C. argued that conditioning and addiction had led him to prefer sex with his computer, rather than a real woman, and that he was attempting to protect the rights of those, like him, who had fallen prey to these addictive processes. C. had had his legal license suspended in 2011 due to “mental infirmity,” but the loss of his license didn’t stop him from pursuing those legal actions.

Healthcare during incarceration. In 1996, a number of convicted, incarcerated sexual offenders sued the State of New Mexico, alleging that the state’s failure to adequately treat the plaintiffs’ sexual addiction constituted violations of their civil rights. States have a constitutional duty to provide medical care to inmates, and the plaintiffs argued that they were driven by sexually compulsive and deviant drives, which had been inadequately treated by the state’s correctional system. They went on to assert that sex addiction was a legitimate, accepted disorder according to numerous medical journals, and that sexual addiction eroded the men’s self-esteem, keeping them in an addictive cycle. Because the mental health conditions alleged by the inmates were not “serious” in nature, had not been diagnosed by licensed physicians, and included no evidence that these concerns had been ignored by the state, the lawsuit’s claims were ultimately dismissed.¹⁴

¹⁰ Eskridge v. Townsend, Wash: Court of Appeals, 3rd Div. 2013.

¹¹ State of Washington v Townsend. Case No. M2010-249.

¹² <http://newsfeed.time.com/2013/07/17/man-sues-apple-for-porn-addiction/>. (URLs alone are not legit cite formats!)

¹³ <http://abovethelaw.com/2014/05/apple-porn-guy-wants-to-marry-his-porn-filled-computer-lets-all-laugh-at-his-motion/>.

¹⁴ Riddle v. Mondragon, 83 F. 3d 1197 - Court of Appeals, 10th Circuit 1996

Family Law

Sex addiction is an increasingly common complaint in family law, related to matters of child custody and divorce proceedings. Such cases have been covered with some sensation in the national media, when they've involved celebrity figures and sports stars. C., the alleged mistress of a prominent national figure, argued in divorce proceedings against her then husband, a plastic surgeon, and that he was a sex addict who had failed to seek treatment, leading to problems in their marriage. Documents produced during the divorce proceedings indicate that her husband had engaged in more than fifty extramarital affairs, many with professional escorts, during his marriage to C. She filed for divorce, informing her husband via email that she "would not stay married to him due to his sex addiction and unwillingness to take his medication for his bipolar disorder."¹⁵

Legal scholars are discussing these matters, and recommending that other attorneys consider sex addiction as a factor in family law cases. An article published in the *Wisconsin Law Journal* describes the role of sex addiction in family law, citing the indirect risks posed to children through neglect or exposure to sexual material. The article minimally acknowledges the lack of data or credibility in sex addiction, but offers unquestioning support of the need for attorneys to educate themselves about the risks and symptoms of sex addiction, referring to Internet websites by sex-addiction proponents, and recommending psychosexual evaluations by sex-addiction therapists, as well as residential, group and medication treatments. There is no acknowledgment of the paucity of data supporting such treatments, and the lack of legal precedents on sex addiction is described as being due to legal reluctance to deal with sexual issues and to people's desires to keep their sexual issues private.¹⁶

Divorce. In 2007, R. petitioned for a divorce from her husband, S., on grounds of habitual cruel and inhuman treatment. S.'s sexual behaviors and attitudes toward his wife and others, allegations of infidelity, and allegations of possible sexual abuse of their children were central to the case, along with allegations of pornography and sexual addictions. S. often requested oral and anal sex from his wife, though she refused to have anal sex, which was a contentious issue for the couple. The couple reportedly had sex about three times a week, though he wanted sex more frequently. A court opinion noted that there was no evidence of rape or sexual abuse by the husband, nor indications of domestic violence, and indicated that R. had consented to these sexual acts. The court described S.'s behavior as "whining, complaining, coercive and boorish." Court records also noted that despite allegations of addiction to pornography, R. admitted that she had not found any pornography in the home in years, and had consensually viewed pornography with her husband in the past. The couple separated in 2004 due to financial problems related to S.'s gambling. He attended residential treatment for gambling addiction at an addiction treatment program. While there, he completed a Sex Addiction Screening Test and was told he should stay an additional ten days to deal with his sexual addiction issues. However, he was never formally diagnosed or treated for sex addiction. Ultimately, courts granted R.'s

¹⁵ <http://www.nydailynews.com/entertainment/gossip/hubby-rfk-jr-s-alleged-mistress-affairs-court-papers-article-1.1843882>.

¹⁶ Pribeck, J. 2010. "Sex addiction requires careful consideration." *Wisconsin Law Journal*. December 7, 2010. <http://wislawjournal.com/2010/12/07/sex-addiction-requires-consideration/>. (URLs alone are not legit cite formats!)

petition for divorce, and supported her allegations of cruel and inhumane treatment as justification for the divorce.¹⁷

Child custody. In 1999, P. and M. were married. Husband M. had a history of drug and alcohol addiction. A few years later, the couple adopted an infant son. In 2010, P. confronted M. about his extramarital sexual activities, and he confessed to patronizing prostitutes over the past several years. The couple divorced in 2011. During this period, M. began attending sex-addiction group treatment. P. filed for sole custody of their son, alleging that her ex-husband's sex addiction put their son at risk. She argued in court that M. had exposed their son to harm by virtue of his participation in sex-addiction treatment with registered sex offenders and by taking their son on an outing with other group members who may have included sexual offenders. A psychological evaluation of M. recommended that the court may wish to supervise and monitor his treatment for sex and drug addiction to ensure the child's safety, but did not indicate that he posed a risk to the child. Ultimately, the court asserted that M.'s sex addiction was not conclusively proven and that no evidence had been provided to prove that he posed a risk to his son. P.'s request for sole custody was denied.¹⁸

R. and A. married in 1995. They had two children, then separated and divorced in 2003. In custody proceedings, A. alleged that her husband was a sexual addict who had purchased a "sex addict self-help workbook" at one point, who had admitted that he had a problem with pornography and credit card debt related to this problem, and who had once taken a nonconsensual nude picture of her in the shower. Additionally, he had once been cited for "loitering for the purposes of prostitution" with a known prostitute in his car. These charges were ultimately dropped. As R. was a high school music teacher at the time, the matter involving the prostitution was considered, but not acted upon, by state and local educational and school boards. R. admitted to attending Alcoholics Anonymous meetings, but asserted that he did so solely "to hear the stories" of people attending. Courts ultimately awarded sole custody to his wife.¹⁹

In a relatively unique case, allegations of sex addiction were leveled against a wife in a case involving a custody dispute between J. and K., who married in 1995. J. was a surgeon and K. an educator. They had two children. In 1999, K. had an extramarital affair, which led to marital conflict. The two reconciled after that. Across their marriage, K. was accused and suspected by her husband of infidelity on multiple occasions, including having an alleged affair and intimate relationship with another woman. Discovery of this relationship ultimately led to J. filing for divorce. During custody proceedings, a guardian ad litem was appointed by the court. The guardian testified that she initially had difficulty believing the husband's allegations regarding his wife. Across the course of the guardian's involvement with the family, however, she became increasingly aware of the wife's tendency to lie and deceive. During the custody proceedings, the husband accused his wife of being a sexual addict, an accusation that was unproven. This accusation ultimately contributed to the court's perception of the husband as being unreliable and as having poor credibility. In the initial proceedings, K. was awarded full custody of the children, on the basis of her primary role as caregiver to the couple's children. The presiding judge stated in the court's decision that: "Wife has demonstrated Christian values of forgiveness, repentance,

¹⁷ Jones v. Jones, 43 So. 3d 465 - MS: Court of Appeals 2009.

¹⁸ Kraft v. Kraft, DE: Supreme Court 2011.

¹⁹ Payton v. Payton, KY: Court of Appeals 2012.

and tolerance while Husband has failed to demonstrate those same attributes as they pertain to his Wife. Finally, I find that [Wife] is most likely to encourage a healthy ongoing relationship between the children and [Husband]. Husband still maintains that Wife is wicked and immoral, continues to maintain that Wife is a lesbian and continues to hang on to hate and anger..." At appeal, this judge's decision was reversed, and the father was awarded full custody, based upon the appellate court's concern that the initial court had been inappropriately swayed by K.'s testimony.²⁰

Criminal Law

Voyeurism. In April 2011, W., a 25-year-old graduate student, set up a hidden camera in the bathroom of a coffee shop, recording several days' worth of videos of women, including underage females, as they used the restroom. That same month, he broke into the apartment of several college-age females, taking underwear, tampon applicators, and personal information. W. was arrested after an employee of the coffee shop noticed the hidden camera and notified police. W. was identified in store security cameras. Upon arrest, he described to police that he had a "fetish" for women using the restroom and admitting masturbating with the videos and materials he had stolen. After arrest, he saw a clinical psychologist who referred him to a "sex therapist," at a sex-addiction treatment facility. There, he was treated for several months by Dr. B., a psychologist and certified sex-addiction therapist. His treatment included an "intensive" ten-day, sex-addiction program. Dr. B. described that W. had a history of depression and isolation prior to the sexual crimes, and insisted that reducing W.'s social isolation was a major component of treatment. W. was also later assessed and treated by psychiatrist Dr. F., who diagnosed him as suffering "compulsive sexual disorder, major depressive disorder, and social anxiety disorder." Dr. F. testified that after treatment, W. had a high level of motivation to "stay in recovery," and that "His behaviors, in my opinion, were a direct result of untreated symptoms of compulsive sexual behavior." Finally, a forensic psychiatrist Dr. L., evaluated W. and testified that W.'s "sex addiction was in remission."

Relevant state law stipulates in *People vs Hofsheier* (2006) that in order to require lifetime registration as sexual offenders, "[T]he trial court must engage in a two-step process: (1) it must find whether the offense was committed as a result of sexual compulsion or for purposes of sexual gratification, and state the reasons for these findings; and (2) it must state the reasons for requiring lifetime registration as a sex offender." This benchmark case explicitly raises the question of sexual compulsivity, stating: "By requiring a separate statement of reasons for requiring registration even if the trial court finds the offense was committed as a result of sexual compulsion or for purposes of sexual gratification, the statute gives the trial court discretion to weigh the reasons for and against registration in each particular case."²¹

W. was required to register as a sex offender, and he appealed the decision, arguing that the court did not take into consideration his "zero risk" for reoffending, by virtue of his treatment. An appeals court upheld the decision to require registration. It is significant in this case that the prosecution offered no evidence contradicting the opinions of the clinical professionals who treated and evaluated W., all of whom explicitly endorsed the sex-addiction diagnosis and formulation. Despite clear evidence of paraphilic behaviors (voyeurism, specific/object

²⁰ *McCrosson v. Tanenbaum*, 652 SE 2d 73 - SC: Court of Appeals 2007

²¹ *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1197 (*Hofsheier*)

fetishism), there is no evidence that W. was diagnosed with a paraphilia, or treated for same. His chances of reoffending, according to these clinicians, were all based on the case formulation as a “sex addict” with depression and anxiety, as opposed to an individual with a diagnosable sexual paraphilia.²²

He said, she said. In 2013, K. pleaded guilty to charges of hindering prosecution, conspiracy, and tampering with a witness in relation to the death of a 19-year-old female student. A year later, K. was the star witness in the murder trial against her former boyfriend, S., charged with killing the 19-year-old female during a sexual encounter involving both S. and K. The two allegedly dumped the young woman’s body in the ocean. During the trial of S., K. was grilled by the defense attorney, who accused her of being a sex addict. This accusation emerged from a Facebook conversation, wherein K. described to S. that she had a “little addiction,” to him, rather than “to the fun” (sexual activity). On the stand, K. denied being addicted to sex. No testimony related to the concept of sex addiction was admitted. S. was convicted of first degree murder and other charges.²³

Sex tourism. W.I., a businessman in the construction industry, was arrested in 2006 connected to charges of child pornography. Since 2001, W.I. had traveled throughout Asia for business trips and had spent weekends during those trips visiting brothels that specialized in underage children. While in the brothels, W.I. photographed the children and himself. He later distributed his photographs using the Internet, which ultimately led to his arrest. The prosecution anticipated that the man’s defense might include an attempt to blame his behaviors on mental illness or addictive behaviors, and cited precedent. “[M]ost people who collect a sizeable amount of child pornography are in some way addicted to collecting it.”²⁴

Prior to his trial, W.I. attended treatment at an addiction program, where he was treated for “alcohol abuse problems and sexual addiction.” W.I. was evaluated by a psychiatrist, Dr. B., who diagnosed W.I. with pedophilia. In contrast, a treating psychologist Dr. S.’s psychosexual report suggested W.I.’s behaviors “could be described as a ‘sexual addiction,’ with many behaviors and an obsessive fixation that included frequent masturbation, anonymous sex with prostitutes, and the eventual use of brothels in Cambodia.” Dr. S. described W.I. as “sexually obsessed for at least the last ten years,” and stated his opinion that his “paraphilias clearly drove his behaviors, in spite of being an otherwise moral and responsible individual upon whom many people, including family, clients, and employees, depended.” On the stand during W.I.’s trial, Dr. S. testified that W.I. has “a long-standing problem with sexual obsession ... something like sexual addiction ... obsessive-compulsive type disorder, not the full-blown disorder, but with the sexual behavior being the most prominent feature.”

The remainder of Dr. S.’s testimony focused on his characterization of the man as a pedophile, and his belief that pedophilia was a treatable disorder that had the potential to reduce risk of reoffending. In a letter W.I. wrote to the district court a week before sentencing, he admitted to his actions and acknowledged their wrongness, adding, “But it was to[o] late, my sex addiction was now in full control of me.” W.I. was initially sentenced to 17½ years in prison, but the

²² *People v. Velasco*, Cal: Court of Appeal, 2nd Appellate Dist., 8th Div. 2014

²³ http://www.fosters.com/apps/pbcs.dll/article?AID=/20140616/GJNEWS_01/140619493

²⁴ *United States v. Caro*, 309 F.3d 1348, 1353 (11th Cir.2002)

sentence was appealed by prosecutors, as too lenient. The Federal Appeals Court held that the judge in the initial trial had been inappropriately swayed by testimony about W.I.'s personal philanthropy, and by testimony presenting pedophilia as affecting his ability to control himself. After appeal, W.I. was sentenced to the maximum, 30 years in federal prison.²⁵

Non compos mentis defense. In 2012, J. faced the death penalty as he stood trial for rape and murder. He admitted to having raped and killed a prominent local figure, a member of the state board of education. J. admitted to the killing, but asked for leniency in sentencing. Part of the defense strategy was to paint him as a sex addict who was out of control in his actions, driven by sex desires that he was powerless to resist. A social worker and sex-addiction specialist testified that J. had earned an 18 on a 20 point-scale measuring sex addiction, and that he was one of the most severe sex addicts she'd ever seen. In contrast, a psychiatrist testified that he had treated J. for mental and alcohol problems, but had been unaware of any sexual issues. J.'s defense attorneys argued that because of his sex addiction and mental illness, he had diminished capacity when he committed these crimes, and thus should not be held fully responsible for his actions. The jury in the case voted unanimously for a life sentence. Neither the sex-addiction diagnosis nor the validity of the scale utilized to assess sex addiction was questioned or challenged during trial.²⁶

Criminal defense attorneys sometimes explicitly identify sex addiction as a potential defense for sexual charges, particularly in cases of child pornography. One attorney's website lists several possible defenses against charges of child pornography, and includes sex addiction amongst them: "Addiction—Although not a true defense, if you can offer psychological testimony that you are addicted to the material and show the appropriate remorse, you could persuade the judge to give you a lenient sentence and undergo counseling as a condition."²⁷

Discussion

Claims of sex addiction are rarely subjected to legal challenges of validity. None of the above cases actually challenge the legitimacy or validity of claims of sex addiction. Even where courts clearly question the validity of sex addiction, they typically use administrative rules to exclude the question of sex addiction, rather than making determinations on the legitimacy of these claims. The pervasive social and media creep of the concept of sex addiction seems to have resulted in an unquestioned, unexamined growing presence of the concept of sex addiction in legal proceedings throughout the United States. In contrast, claims of "codependency," "recovered memory," and polygraph-related testimony are commonly and frequently challenged on grounds of admissibility.

As is clear in many of the cases cited above, the concept of sex addiction is often applied to cases of sex offending, as well as instances of paraphilias. This application happens despite the fact that most definitions and theories of sex addiction specifically indicate that it is excessive, non-

²⁵ US v. Irey, 612 F. 3d 1160 - Court of Appeals, 11th Circuit 2010 http://articles.orlandosentinel.com/2010-07-30/news/os-orlando-child-pornography-20100730_1_appeals-court-frank-irey-construction-william-irey

²⁶ <http://abclocal.go.com/wtvd/story?section=news/local&id=8675237>

²⁷ <http://www.russmanlaw.com/blog/criminal-defense/sex-crimes/nh-criminal-defense-to-a-child-pornography-charge/> Accessed August 2, 2014

paraphilic sexual behavior (e.g., Reid, Kafka). In research by Bancroft and Vukadnovic, the authors interviewed 22 individuals enrolled in Sex Addicts Anonymous. Of these volunteers, two of them were criminals with sex offenses in the areas of exhibitionism and child sex abuse. These individuals claimed that they were not out of control but that there were sexual behaviors they would pursue if they could “get away with it.” “Both of these men obtained some benefit from regarding themselves as sex addicts” but did not report any out-of-control sexual behaviors.²⁸

Further research with self-identified sex addicts and with sex offenders in treatment indicates substantial overlap may exist between the two groups. Compulsive masturbation and pornography “dependence” are reported for as many as 70 percent and 50 percent of individuals in treatment for paraphilias and sex offending, respectively.²⁹ These findings suggest that what is called sex addiction may often result from an established paraphilia and that an additional diagnostic label of sex addiction is unwarranted. This unclear overlap and the fact that these overlaps are not critically examined or questioned from a diagnostic perspective essentially guarantee that the issue of sex addiction will intrude into legal cases related to paraphilias and sexual offending. The criminal cases cited herein give clear indications that the concept of sex addiction is being applied to matters of criminal sexual behavior. This connection is troubling, when the sex-addiction label may lead to referrals for treatments not demonstrated to address sex offending and may give the public a mistaken impression of safety.

Psychologist Patrick Carnes, Ph.D. first introduced the concept of sex addiction in 1983. Carnes based his concept on his anecdotal clinical experiences and explicitly applied the 12-Step model of treatment utilized in Alcoholics Anonymous.³⁰ The concept garnered significant attention throughout the years, particularly among clinicians who were familiar with the 12-Step model of treatment for chemical dependency. Carnes explicitly applied and invoked the theory and practice of the 12-Step treatment approach of Alcoholics Anonymous as he developed his model of sex-addiction diagnosis and treatment.

12-Step treatments have proliferated throughout the country as inexpensive, often free, community support groups for problems such as alcoholism or drug addiction. However, such programs are inherently spiritually based organizations, according to the US Supreme Court.³¹ Recent publications now suggest that 12-Step treatment approaches may be far less effective than has been believed, and may even be harmful to many who enter them.³²

²⁸ Bancroft, J & Vukadnovic, Z. Sexual addiction, sexual compulsivity, sexual impulsivity or what? Toward a theoretical model. *Journal of Sex Research*, 41, 2004, 225-234

²⁹ Kafka, M. 2010. Hypersexual disorder: A proposed diagnosis for DSM-V. *Archives of Sexual Behavior* 39, 377-400

³⁰ Carnes, P. (1983). *Out of the shadows: Understanding sexual addiction*. Minneapolis: CompCare Publications.; Carnes, P. (1989). *A gentle way through the twelve steps: A workbook for alcoholics, compulsive overeaters, sex addicts, compulsive gamblers, and other addicts and for their loved ones, including co-dependents and children*. Minneapolis: CompCare Publications.

³¹ Office of Juvenile Justice and Delinquency Prevention, “Using ‘Sober Support’ Groups in Your Juvenile Court,” Technical Assistance Bulletin, 2010, <http://www.ncjfcj.org/images/stories/dept/jfl/sobersupport.pdf>.

³² Dodes, L. & Dodes, Z. (2014) *The Sober Truth, Debunking the Bad Science Behind 12-Step Programs and the Rehab Industry*. Boston, MA: Beacon.

The majority of sex-addiction treatment facilities use some form of 12-Step approach, as do the numerous 12-Step groups, including Sexaholics Anonymous, Sex and Love Addicts Anonymous, etc. Despite the proliferation of 12-Step approaches for treatment of sex addiction, no published studies demonstrate that such techniques or intervention strategies are clinically effective. This lack of evidence for treatment efficacy is especially unfortunate, given the role that such groups and programs play in legal matters, where administrative and criminal courts often refer, or order individuals into treatment. It appears likely that courts, as with American society and the media, are attributing higher than warranted levels of success to such programs and may have unsupported expectations that such programs are helpful.

Many anecdotal descriptions of sex addiction suggest that sex addicts demonstrate difficulties with impulsivity, cognitive rigidity, emotional dysregulation, and other forms of “executive functioning.” Scientists investigating high-frequency sexual behaviors rarely describe these behaviors as an addiction (37 percent of articles)³³. In fact, most scientists have overtly rejected the addiction model.³⁴ Research examining those who self-identify as sex addicts has shown that their self-identification as sex addicts is predicted most strongly by issues of libido and religiosity.³⁵ Despite the belief that sex addiction is “uncontrollable,” some research with self-identified sex addicts has shown that they are no less able to exert control over their sexual arousal than are non-sex-addict counterparts.³⁶

Sex addict is a label applied overwhelmingly to males. The label largely reflects the fact that so-called “addictive” sexual behaviors predominately include sexual behaviors that men engage in more frequently than women, such as masturbation, use of pornography and prostitutes, infidelity, and even the use of sex as a form of coping or stress relief. Roughly 90-95 percent of alleged sex addicts are males, according to most published studies and articles, including those by sex-addiction proponents. One prominent research study suggests that alleged sex addicts in sex-addiction treatment facilities and non-residential programs are 92 percent white males, where 88 percent of the alleged sex addicts have at least a college education, and 48 percent make over \$80,000 per year.³⁷ Thus, what is called sex addiction may merely reflect a label that is currently being applied to excuse or explain a long-standing sexual behavior of powerful, wealthy men. Consistent with this, the overwhelming majority of legal cases cited above involved males alleged to be sex addicts. Given the argument that sex addiction may be a defense or excuse

³³ Mudry TE, Hodgins DC, el-Guebaly N, Wild TC, Colman I, Patten SB, et al. Conceptualizing excessive behaviour syndromes: a systematic review. *Curr Psychiatr Rev.* 2011;7(2):138–51. doi:10.2174/157340011796391201.

³⁴ Mudry TE, Hodgins DC, el-Guebaly N, Wild TC, Colman I, Patten SB, et al. Conceptualizing excessive behaviour syndromes: a systematic review. *Curr Psychiatr Rev.* 2011;7(2):138–51. doi: 10.2174/157340011796391201; Stein DJ, Black DW, Pienaar W. Sexual disorders not otherwise specified: compulsive, addictive, or impulsive? *CNS Spectr.* 2000;5(1):60–4.; Kor A, Fogel YA, Reid RC, Potenza MN. Should hypersexual disorder be classified as an addiction? *Sex Addict Comp.* 2013;20(1–2):27–47. doi:10.1080/10720162.2013.768132.

³⁵ JB Grubbs, JJ Exline, KI Pargament, JN Hook. (2014). Transgression as Addiction: Religiosity and Moral Disapproval as Predictors of Perceived Addiction to Pornography. *Archives of Sexual Behavior*

³⁶ Winters, J., K. Christoff, and B. Gorzalka. “Dysregulated Sexuality and High Sexual Desire: Distinct Constructs?” *Archives of Sexual Behavior* 39, no. 5 (2010): 1029– 1043. doi:10.1007/s10508-009-9591-6.

³⁷ Reid, R. C., Carpenter, B. N., Hook, J. N., Garos, S., Manning, J. C., Gilliland, R., Cooper, E. B., McKittrick, H., Davtian, M. and Fong, T. (2012), Report of Findings in a DSM-5 Field Trial for Hypersexual Disorder. *Journal of Sexual Medicine*, 9: 2868–2877. doi: 10.1111/j.1743-6109.2012.02936.x

related to historical sexual privilege, it is compelling to note the substantial presence of claims of sex addiction in administrative-law proceedings. Such cases often involve males in professions such as law and medicine where claims of sex addiction appear to be used to explain and treat sexual misbehaviors by educated, often wealthy men.

Legal status of sex-addiction-related testimony. For mental health or scientific evidence to be admissible in court, it must fulfill standards of legal proceedings regarding scientific information. These rules require that scientific testimony be based upon research that is repeatable and that involves testing hypotheses with real world data, upon using sound science, and upon research and scientific information that is generally accepted. The error rate involved in this research should be established and measurable as a reflection of the reliability of this information.³⁸ The concept of sex addiction fails to measure up to these expectations across every dimension.

Different therapists and writers apply differing etiologies to each term, using a bewildering and conflicting variety of psychological theories to explain behaviors and problems. Further, these hypotheses are rarely tested. Instead, the field of sex addiction is filled with untestable theories and clinical interpretations based on unfalsifiable arguments.

Within the sex-addiction literature, a great deal of anecdotal and observational reporting is present, typically from within sex-addiction treatment programs, but with little real-world empirical testing of the hypotheses. Indeed, it is estimated that fewer than one-in-four articles about sex addiction actually include empirical data, much less reflect scientific studies designed to minimize the effects of bias.³⁹

No published data exists that reflects a general error rate of sex-addiction diagnoses. DSM-5 trials in 2013 by Reid and colleagues demonstrated that some reliability exists for the application of criteria related to “hypersexual disorder,” though these criteria were tested on a limited sample of self-identified sex addicts, and no comparison was made to a non-clinical population. Tests that assess sexual addiction are poorly researched, and have a wide variance in their theoretical approaches, a direct reflection of the many competing theories of sex addiction. These tests are widely found on the Internet, though they have no empirical or scientific grounding, and typically reflect only the clinical experiences and theories of the test’s creators. Few if any of these tests have been normed on the general population. Many of these tests over-pathologize normative sexual behaviors.⁴⁰

A significant level of skepticism about sex addiction exists in both the general public and the scientific community and the mental health field, especially illustrated by the lack of a diagnostic acceptance in the DSM. Sex addiction is not an accepted diagnosis, nor is it even a concept among medical professionals. Significant majorities of both lay persons and medical professionals believe that the concept is an attempt to avoid responsibility and is not a valid or

³⁸ Frye vs United States (1923); Daubert v. Merrell Dow Pharmaceuticals (1993).

³⁹ Ley, D., Prause, N & Finn, P. (2014, February). The emperor has no clothes: A review of the “pornography addiction” model. *Current Sexual Health Reports*. ((need to verify/complete this cite ... I found it at *Current Sexual Health Reports*: June 2014, Volume 6, Issue 2, pp 94-105 plus the February date ... was it published online first? What’s the correct format?))

⁴⁰ Ley, D. (2012) *The Myth of Sex Addiction*. Rowman & Littlefield.

true medical disorder.⁴¹ Sex addiction was identified as a form of “addiction” by the American Society of Addictive Medicine (ASAM). However, this body is not a governing body of diagnoses or practice. It is clear from the relevant statements that the intent of identifying sex as a potentially addictive behavior was designed to generate political and social acceptance and to reduce stigma of these problems. Such a social endeavor is admirable, but is not diagnostic or scientific.⁴²

The issue of establishing sex addiction as a legitimate diagnosis is often dismissed as a mere ivory tower issue that reflects the impractical views of academics. However, it is vital that medical and mental health interventions be based on accurate, up-to-date scientific evidence. Given the powerful role that medical and mental health practice plays in legal realms, such interventions must be informed and moderated by acknowledgment that cultural and social biases can intrude into medical practices, sometimes in harmful and destructive ways. The history of American medicine is replete with examples in which sexual issues were treated inappropriately by the medical and mental health fields based upon poor science.

Given the many ongoing scientific and therapeutic questions and concerns about sex addiction, the role of sex addiction in legal proceedings must be examined critically. Because sex addiction is often endorsed in the general media, it is understandable that court proceedings may likewise accept this concept and label in an uncritical fashion. As a result, it is essential that mental health professionals, forensic psychologists and psychiatrists, sex-offender therapists, and sexologists endeavor to educate the courts about these questions and concerns when sex-addiction claims or labels are presented in court. Such skepticism and concerns are important to preserve legal credibility of our fields, to protect victims, and to ensure that individuals are held responsible for their behaviors.

⁴¹ Ley, D. (2012) *The Myth of Sex Addiction*. Rowman & Littlefield. P 138.

⁴² <http://www.asam.org/for-the-public/definition-of-addiction>