

Excerpt from

Use of DSM Paraphilia Diagnoses in SVP Commitment Cases

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A number of experts have asserted the presence of a paraphilia based solely on the history of the sexual offenses [MBF], which is a logical fallacy (i.e., assuming that the presence of a consequence [i.e., sexual offense] necessarily implies the presence of the antecedent [i.e., paraphilia]). One possibly contributing factor for this type of error is the minor change in the wording of criterion A for the paraphilias introduced during the last stages of the DSM-IV production process. Criterion A in DSM-III-R required "recurrent intense sexual urges and fantasies" occurring over a period of 6 months, wording that was retained in the draft criteria for DSM-IV (March 1993 DSM-IV Draft Criteria). However, in the final version of DSM-IV that appeared in May 1994, the criterion A wording was slightly altered to require "recurrent, intense, sexually arousing fantasies, sexual urges, *or behaviors*" over a period of 6 months. The decision to add "behavior" to criterion A was actually a side effect of a more significant change to the DSM-IV criteria for paraphilias: the replacement of the wording, "the person has acted on these urges or is markedly distressed by them" in the DSM-III-R criterion B with "the fantasies, sexual urges or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning".

This change was intended to incorporate the standard wording of what was known as the "clinical significance criterion", (i.e., "the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning"), which was added to most DSM-IV disorders in order to help "establish the threshold for a diagnosis of a disorder in those situations in which that symptomatic presentation by itself (particularly in its milder forms) is not inherently pathological and may be encountered in individuals for whom a diagnosis of 'mental disorder' would be inappropriate". (DSM-IV-TR, p. 8).

Since the behavioral element of criterion B (i.e., "acted on the urges") had been removed, "sexually arousing...behavior" was added to criterion A to reflect the fact that

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it was typically the person's paraphilic behavior that brought him to clinical attention (A. Frances, personal communication, 2006). However, it is extremely important to understand that at no time was there ever any intention by the APA for these wording changes to signify a change in "caseness" (i.e., it was assumed that both the DSM-III-R wording and the DSM-IV wording would identify exactly the same set of individuals as having a paraphilia). Reflecting this, the only change to the Paraphilia section reported in the "Annotated Listing of Changes in DSM-IV" appendix in DSM-IV (6), was the addition of the gender dysphoria specifier to the diagnosis of Transvestic Fetishism.

However, because this change in wording to criterion B was misinterpreted by some groups of non-clinicians (particularly some conservative Christian groups) as signaling that the American Psychiatric Association had decided that Pedophilia is no longer a disorder (7-9), the original DSM-III-R wording of Criterion B (i.e., "The person has acted on these urges or is markedly distressed by them") was, for the most part, reinstated. However, the original criterion A wording was not restored to what it was in the DSM-III-R version because it was never anticipated that anyone would interpret the addition of "or behaviors" as having any diagnostic significance, i.e., as indicating that the deviant behavior in the absence of evidence of the deviant sexually arousal pattern (i.e., the presence of fantasies and urges) causing the behavior would justify a diagnosis of paraphilia.

The fact that some experts would use a literal reading of criterion A to justify making a diagnosis of a paraphilia based entirely on criminal behavior goes against both the spirit of the DSM-IV as well as the requirements of the SVP commitment statutes. The introduction to DSM-IV-TR states clearly that "the specific diagnostic criteria included in DSM-IV are meant to serve as guidelines to be informed by clinical judgment and are not meant to be used in a cookbook fashion." (DSM-IV-TR, p. xxxii). The core construct of a paraphilia, which involves a deviant focus for sexual arousal, is well-established in both the scientific and clinical literature so that behavior by itself cannot meet the requirements for criterion A. Similarly, some SVP statutes themselves state that triers-of-fact may not rule that the offender is a sexually violent predator on the sole basis of the violent sexual crimes but must find proof from the

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testimony of mental health experts that the respondent suffers the mental abnormality defined in the statute that makes the offender commit such crimes. For example, California's Welfare and Institutions Code Section 6600 Article 4 Sexually Violent Predators, states "(a)... Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absence relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (State of California, Welfare & Institutions Code: Division 6, Part 2, Article 4, Section 6600, (a) (3)). Higher Court decisions, which require there be proof of the mental abnormality linked causally to the criminally sexual behavior, have ruled in harmony with that admonition.

Once "fantasies and urges" are established as present, then, for paraphilias that do not involve non-consenting victims (e.g., fetishism), the diagnosis is made if the paraphilic fantasies, urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

² In the case of paraphilic coercive disorder included in the DSM-III-R Casebook, the individual with the paraphilia fantasized about rape but was turned off if he felt that the woman was in any way suffering.