

Sharing Violent Thoughts on the Internet

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The anonymity of the Internet enables people to explore and share certain thoughts they may not feel comfortable sharing through traditional means. This is true for socially unacceptable thoughts, including violent and sexually sadistic fantasies. Despite one's relative freedom to explore virtually any subject anonymously, some Internet activities can attract unwanted attention from the media and law enforcement authorities. The case of former New York City police officer Gilberto Valle is illustrative of the problems that can be generated by online activities. This article discusses the case of *United States v. Valle*, 807 F.3d 508 (2nd Cir. 2015) and the tension between First Amendment protections and criminal activity. Forensic mental health experts may be well suited to educate the trier of fact about violent fantasies and their associated risks.

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The First Amendment of the United States Constitution¹ protects freedom of speech and freedom of the press among the country's citizens. This protection includes freedom of communication and expression through various media, including the Internet. The Internet provides a venue for people who have uncommon interests to connect with others with similar interests. However, the anonymity that the Internet offers may allow users to behave antisocially or in ways that are not socially acceptable. This sense of freedom allows users to explore sexually-deviant, and potentially harmful, interests.

Deviant thoughts and fantasies, in and of themselves, are not crimes. Crimes require some manifestation of intent, which is usually found in a physical act. However, the lines are blurry when it comes to the division between fantasy and criminality.

The case of *United States v. Gilberto Valle*, 807 F.3d 508 (2nd Cir. 2015)² addressed an interesting

question at the intersection of fantasy and reality: When does one's expression of fantasies online cross into actual criminality? Gilberto Valle, known as the "Cannibal Cop," faced criminal charges for conspiracy to kidnap when he exchanged messages online about kidnapping, killing, and eating women. This article summarizes the *Valle* case, presents its procedural history, and discusses the opinions of mental health clinicians who prepared materials in the case. Using *Valle* as background, we discuss the legal principles involved in assessing whether online communication rises to criminal conspiracy, which the First Amendment does not protect. Furthermore, this article reviews research on paraphilias and paraphilic disorders to help readers better understand the link between paraphilias and the risk of violence.

United States v. Gilberto Valle

The authors prepared this article based on information available in public domains; the authors were not involved in the *Valle* case in any capacity. The following facts are taken from the Second Circuit opinion² unless otherwise identified. At the time of the events that gave rise to the legal case, Mr. Valle was an officer with the New York Police Department. He was married and lived with his wife and their infant daughter.

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Mr. Valle was a member of the Dark Fetish Network (DFN), a website for individuals who have deviant sexual interests, including bondage, cannibalism, and necrophilia.² Through email and webchat, Mr. Valle exchanged communications with dozens of individuals about his interests, and he frequently communicated with two online acquaintances. They exchanged photographs, including pictures of Mr. Valle's wife and other women he knew. In his chats, Mr. Valle described various gruesome acts, including torturing, raping, murdering, and cannibalizing various women, including his wife and college friends. In September 2012, Mr. Valle's wife became concerned after she discovered disturbing images on their shared computer, and she contacted federal authorities. Mr. Valle was arrested in October 2012. He was subsequently indicted on two counts: conspiracy to kidnap (18 U.S.C. § 1201)³ and unlawful search using the police department's computer database under the Computer Fraud and Abuse Act (CFAA) (18 U.S.C. § 1030).⁴ Mr. Valle was alleged to have used the police computer database system to seek personal information and criminal records pertaining to a former high school friend about whom he had fantasized (Ref. 5, p 51).

At the trial, the prosecution presented evidence that Mr. Valle had searched for the addresses of potential targets he had identified in his chats and that he performed web searches on different methods of torture as well as "how to make chloroform" (Ref. 2, p 519). Although the prosecution team agreed that many of the communications were "fantasy," they posited that several conversations represented "elements of real crime" due to the specificity of dates, names, and activities that Mr. Valle included in the postings. Prosecutors supported their position with evidence provided by an FBI agent who had combed through Mr. Valle's online communications and Internet searches to identify what he believed were real chats, in contrast to fantasy play (Ref. 2, p 512). The prosecutors asserted that it was only a matter of time before Mr. Valle would harm someone.

Although Park Dietz, MD, PhD, a forensic psychiatrist and criminologist, evaluated Mr. Valle for the defense, he did not testify at the trial. He would have testified as to Mr. Valle's risk for actually carrying out violent acts toward others. A *New York Times* article conveys that the defense made a strategic legal decision to have neither Dietz nor Mr. Valle testify.⁶ Instead of focusing more on Mr. Valle's fantasy life,

they elected to focus on the government's lack of evidence of conspiracy and its burden to establish all elements of the crime beyond a reasonable doubt. The prosecution did not retain any mental health witnesses.

In summation, the prosecution urged jurors to use their common sense in determining Mr. Valle's guilt. The defense, in contrast, emphasized that the DFN's purpose was fantasy and they asserted that Mr. Valle never intended to carry out his fantasies. The defense pointed to Mr. Valle's many false claims made on the DFN site (e.g., that he owned a cabin equipped with torture devices and an oven large enough to hold a human body) as proof that Mr. Valle intended his fantasies to remain fictional. The jury found Mr. Valle guilty on both charged counts.

After conviction, Mr. Valle moved the court to acquit him of the convictions or to allow for a new trial. The motion included a declaration by Dietz in support of post-verdict relief. This declaration was submitted to rebut aspects of the prosecution's trial summation, and it included opinions about the level of danger to others posed by Mr. Valle.⁷ Dietz stated that his assessment of Mr. Valle had revealed no mental illness, psychopathy, antisocial personality disorder, or other personality disorder associated with violence. Instead, Dietz opined Mr. Valle sought out nonviolent and noncriminal ways of coping with these fantasies by watching pornography and sharing his deviant thoughts with others online.⁷

The district court granted Mr. Valle's postconviction motion to acquit him of the conspiracy conviction. The district court ruled that the prosecution had failed to prove that Mr. Valle had entered into a conspiracy or that he had the specific intent to kidnap.⁵ The district court noted that there was no evidence of Mr. Valle acting violently toward others, threatening victims, or taking concrete steps to put his online kidnapping chats into action. (He had not, for example, bought rope, purchased chloroform, or met his online co-conspirators in person.) The government appealed the conspiracy count, and Mr. Valle appealed the computer fraud count. Of note, instigated by the investigation of Mr. Valle, his alleged co-conspirators faced separate legal proceedings in which evidence of specific online communications and physical meetings in furtherance

of kidnapping plans, which were unconnected to Mr. Valle, were introduced.⁸

On appeal to the U.S. Court of Appeals for the Second Circuit, Fred S. Berlin, MD, PhD and Chris Kraft, PhD filed an amicus brief on behalf of the Johns Hopkins Sexual Behavioral Unit and to relay the scientific knowledge on the topic of sexual fantasies. The doctors wrote in support of affirming Mr. Valle's acquittal.⁹

The intention of the amicus brief was to assist the court in determining whether the scenarios in Mr. Valle's case were consistent with fantasy and non-criminal behavior. Berlin and Kraft provided information about the association between sexual fantasies and criminal behavior. Although they did not personally interview Mr. Valle, they stated: "Mr. Valle appears to be a man with a habitual, obsessive tendency to fantasize—but not a criminal . . . [His] expressions online do not appear to support an inference that he was anything more than a fantasist" (Ref. 9, p 16).

The Second Circuit Court of Appeals rejected the government's effort to hold Mr. Valle guilty for misuse of the police computer database. The court narrowly construed the Computer Fraud and Abuse Act (CFAA) because to do otherwise would expose millions of ordinary computer users to possible criminal liability. More importantly for the purpose of this article, the appellate court upheld the trial court's acquittal on the conspiracy count. The Second Circuit held that "the mere indulgence of fantasy, even of the repugnant and unsettling kind here, is not, without more, criminal" (Ref. 2, p 521).

The Second Circuit found that Mr. Valle's fantasies did not extend beyond the Internet and that there was insufficient evidence of surveillance of potential victims. Although Mr. Valle had met with his former college classmate (alleged by the prosecution to be a potential victim), the court found that he had communicated with her on a regular basis for a year prior to the alleged kidnapping plot and that the two had regularly made efforts to see each other. Mr. Valle did not meet with the classmate alone, but instead took his wife and daughter along with him (Ref. 2, p 13). The court found it significant that Mr. Valle had never attempted to learn the real identities of or take measures to meet with any of the people with whom he had chatted online. He also had a disclaimer on his profile indicating that

anything he said in the chatrooms was fantasy. The court found that, outside of his Internet chats and Google searches, Mr. Valle took no steps to put his plans into action and thus render his behavior criminal.

Discussion

The world of cyberspace presents new challenges in thinking about freedom of expression. As Internet use expands, more people can publicly share their thoughts via a variety of social media sites. Perhaps because of the perceived anonymity, there are many venues for communicating dark, offensive, or fanatical content online. Forensic psychiatrists may be familiar with evaluating a defendant's online presence retrospectively as evidence of intent in a criminal case, but this generally occurs after a defendant is charged with doing actual harm. The *Valle* case, however, is distinct because it concerns the assessment of a person's online communications in the absence of actual harm.

Legal Considerations

Mr. Valle faced conspiracy charges. Conspiracy punishes people who agree to commit a crime together.¹⁰ It is a specific-intent crime, which means that a person cannot be held criminally responsible without the establishment of the requisite intent to commit that particular crime. A conviction for conspiracy does not require the commission of the planned offense. It differs from most other crimes because it permits federal law enforcement to arrest people before they carry out their agreement. In this way, criminal conspiracy sets the threshold of criminality earlier than other crimes. This variant boundary is seen as a powerful tool for law enforcement and prosecutors. In many jurisdictions, defendants can be charged with both conspiracy and any substantive crimes committed in furtherance of the conspiracy. Therefore, prosecutors may use the threat of additional charges during plea negotiations. Today, in addition to the federal conspiracy statute, all fifty states have conspiracy laws on their books.

Mr. Valle faced charges of federal conspiracy to commit kidnapping under 18 U.S.C. § 1201.³ Online communications (which have been deemed to constitute interstate commerce) subjected Mr. Valle to federal jurisdiction (Ref. 2, p 17). The federal conspiracy law requires proof beyond a reasonable doubt of the following three elements: the defendant

intentionally entered into an agreement to kidnap; the defendant intended that the kidnapping would actually occur; and the defendant or a co-conspirator committed an overt act in furtherance of the conspiracy (18 U.S.C. § 1201).³

To meet the first element, the prosecution in *Valle* pointed to Mr. Valle's communications with specific other individuals in the DFN. For the second and third elements, the government highlighted Mr. Valle's police database searches, Google searches regarding chloroform, and his meeting with a former classmate because she had been referenced in his Internet communications and the meeting temporally corresponded with Mr. Valle's online discussions of her kidnapping. The government argued that these actions were overt acts taken in furtherance of Mr. Valle's plan.

Under common law, conspiracy was merely an agreement between two or more people to commit an unlawful act. Most statutes now, including the federal statute at issue in *Valle*, require an overt act toward the commission of the conspiracy. Despite this, critics of criminal conspiracy law assert that the law establishes the threshold for criminality too early, thereby punishing thoughts rather than behavior; it therefore has the potential to be easily abused.¹¹ Conspiracy law allows for prosecutors to use indirect evidence to prove the existence of a conspiracy. In the digital age, when people can freely post their innermost thoughts and off-hand comments, what may be intended as shared fantasy could be viewed by outside observers as the formation of an agreement. As such, another criticism is that conspiracy law may threaten individuals' First Amendment rights to freedom of expression.

Valle is not the only recent case to look at First Amendment rights in the setting of violent online postings. In *Elonis v. United States*, the U.S. Supreme Court considered the issue.¹² On Facebook, Anthony Elonis posted violent messages about killing his wife. For example, he posted: "There's one way to love you, but a thousand ways to kill you. I am not going to rest until your body's a mess, soaked in blood and dying from all the little cuts" (Ref. 13, p 342). Mr. Elonis was charged with a federal crime for making threats over interstate communication (18 U.S.C. 875(c)).¹⁴ He argued that the posts were not intended as threats toward his wife, but rather were therapeutic and were merely rap lyrics. Mr. Elonis presented evidence that he was an aspiring

rap artist. At issue in *Elonis* was whether the Facebook posts were protected free speech or whether they had become "true threats" and were, therefore, unprotected.

The Supreme Court did not rule specifically as to whether Mr. Elonis's statements met the definition of true threats. However, the Court held that the content of the online messages alone is insufficient to establish a crime. A defendant's *mens rea* must be considered. The immediate experience of readers, even when they subjectively feel threatened, is insufficient to render a statement a threat. The Court recognized that online communication could blur context and the nuance of the statements.¹⁵

The cases of *Valle* and *Elonis* illustrate the importance of looking to the intent of the person posting the information and assessing how one's intent may be inferred from Internet communications.

Clinical Considerations

The prosecution in *Valle* argued that the jury should "use their common sense" in determining Mr. Valle's guilt (Ref. 2, p 108). The prosecution suggested that violent thoughts are uncommon; that when an individual expresses violent thoughts (as Mr. Valle had done), the person intends to act on them; and that the expression of the thoughts implies that a future harmful action is likely.^{2,5}

As Dietz, Berlin, and Kraft pointed out in their submissions to the court, there can be significant risks of error when jurors use their common sense in an area where they lack sufficient experience and understanding.^{7,9} Laypersons may react based on what they subjectively believe to be acceptable rather than based on any scientific understanding of violent or sexually sadistic fantasies. There is a risk that jurors will pass judgment on the defendant based on their disgust at the defendant's fantasies or communications, even in the absence of actual harm or measures in furtherance of actual harm.¹⁶ Although clinicians are not immune to bias in forensic decision-making, forensic psychiatrists may be well suited to educate triers of fact about the link between paraphilias (as well as dark fantasies) and the risk of violence.

Paraphilia Classification

In the Diagnostic and Statistical Manual, Fifth Edition (DSM-5), there is a distinction between paraphilia and disordered paraphilic behavior. The latter is a cause of distress, impairment, or harm; the

former is not typically associated with mental illness.¹⁷ The DSM-5 reflects the perspective not to automatically label as pathological persons with non-normative sexual interests when it does not cause negative consequences to the individual or others. Paraphilias commonly studied in research include pedophilia, frotteurism, sadism, and masochism. Although these sexual urges, fantasies, or behaviors can be classified as paraphilias, an individual must experience some level of distress or impairment before a diagnosis of paraphilic disorder may be made. In this conceptualization, having a paraphilia would be a necessary but not a sufficient condition for having a paraphilic disorder, and not all paraphilias are associated with mental illness.^{17,19,20} The paraphilias that Mr. Valle shared on the DFN included sadism and necrophilia.

Violent and Sexually Violent Fantasies

In his declaration to the court regarding Mr. Valle's charges, Dietz stated:

The prevalence of sexually arousing fantasies concerning binding, domination, torturing, and forcing sex on women is so high in every study that the inference that millions of American males experience sexual arousal from thoughts, images, and stories of violence against women is inescapable.⁷

To get a sense of the online sites and numbers of people exploring sexual fantasies via online sources, we conducted an online Google search for "fetish dating," "dark fetish," and "BDSM forums" (BDSM referring to a range of behaviors, including bondage, discipline or domination, sadism, and masochism). The results listed several online communities that cater to those who are aroused by such fantasies. These websites ranged from online threads for those who are simply curious to forums for those who are experienced in or who enjoy the "darker" fetishes, such as cannibalism and necrophilia. As mentioned above, DFN, the website Mr. Valle frequented, is listed as an adults-only open social community; the website states that people will not feel like outcasts "because of their dark fetishes."²¹ DFN claims to have more than 77,000 members worldwide and listed many sexual "kinks," including cannibalism, hanging, death, shooting, decapitation, and gutting.²¹

Further, the literature reveals that physical and sexually violent fantasies are not uncommon. Several studies have examined the prevalence of violent fantasies among populations of undergraduate and grad-

uate students. In 2005, Gellerman and Suddath²² summarized several important studies. Among these, Kenrick and Sheets²³ reported that 68 percent of undergraduate students had at least one homicidal fantasy. For men, 30 percent reported having these fantasies frequently; for women, 15 percent endorsed having such fantasies frequently.²³ Men had more frequent and prolonged fantasies compared with women. Although the majority had violent fantasies for "a few minutes," 18 percent of men had violent fantasies lasting "a few hours." Adopting Kenrick and Sheets' methodology, Crabb²⁴ reported that 47 percent of undergraduate students in the study endorsed having had a recent homicidal fantasy. In this study, a minority of respondents (2%) fantasized about the use of a torture device. Overall, the studies looking at gender differences vary; findings range from equal likelihood of violent fantasies between men and women to a four-times-greater prevalence among men. These results also varied based on the types of fantasy studied.^{22,25,26}

Regarding sexualized violent fantasies, in a 1980 study, Crepault and Couture²⁷ interviewed French-speaking Canadian men about their sexual fantasies ($n = 94$). One third of respondents endorsed having had a fantasy of raping a woman. Additionally, a significant minority of respondents endorsed having had fantasies about humiliating (15%) or beating (11%) their sexual partner.²⁷ Similarly, in a more recent study, Larue and colleagues²⁵ conducted a study involving 210 participants (107 male and 103 female) and found that one third of the male participants reported having fantasies involving nonconsensual sex and themes of domestic violence.

In a series of studies, researchers from the University of Québec found that, out of 1,500 adults surveyed, 57 percent of the population reported that their most intense paraphilic fantasies were as intense as their most intense normophilic fantasies and concluded that 57 percent met the DSM-5 criteria A of paraphilia.^{28,29} In a more recent study, Joyal and Carpentier³⁰ showed that 46 percent of 1,040 people surveyed stated they would like to experience at least one paraphilic behavior (described as voyeurism, fetishism, frotteurism, and masochism), and 34 percent had experienced such behaviors at least once previously. Mr. Valle shared on the DFN his interests in sadism and necrophilia. The prevalence of sexual sadism is not well quantified, and estimates

vary widely from 2 percent to 30 percent (Ref. 17, p 696). Likewise, the exact prevalence of necrophilia in the general population is not known.^{31,32}

Association Between Fantasies and Behavior

Although the research cited here is not exhaustive and more research is needed, several studies have looked at the association between fantasy and actual violence in efforts to quantify a link. We identify some of the key studies here to point out that more research in this area is needed. However, what the studies repeatedly conclude is that fantasies may be a risk factor but are not conclusive of future violence. In this manner, although having a paraphilia may be a risk factor, having a paraphilia or disordered paraphilic behavior is not automatically associated with committing violence. In fact, the research suggests that most paraphilias do not result in offenses.

In one study, Smith and colleagues used a community sample of juveniles (age 7–14 years) and their mothers to gather information on aggressive behavior by administering behavior and fantasy inventories.³³ They concluded that, where the child's exposure to violence was absent or low, even high levels of violent fantasies was not predictive of violent behavior.³³

Gellerman and Suddath²² conducted a review of the literature to identify risk factors for actual violence among those who had revealed violent fantasies to their mental health clinicians. Risk factors associated with increased likelihood of committing a violent act after an individual had reported a violent fantasy to a mental health professional included:^{22,34,35}

- History of violence
- Recent hospitalization (within the past year)
- Level of impairment resulting from obsession with fantasy
- Foreseeability of acting on fantasy
- Foreseeability of any victims
- History of impaired impulse control
- Substance use
- Major mental illness
- Ability to act out the fantasy

This is consistent with the MacArthur Study of Mental Disorder and Violence,³⁶ which included an assessment of the potential link between violent fantasies and subsequent violent behavior among sub-

jects hospitalized for a mental disorder. According to the Schedule of Imagined Violence, which is a series of eight questions about violent thoughts and fantasies, one third of subjects had recent violent thoughts (i.e., within two months of their hospitalization). The presence of violent fantasies at hospitalization was associated with a statistically increased risk of violence in the year after discharge, but the authors questioned the clinical significance. Although assessing violent fantasies and the individual's ability to carry out the fantasy is important, other risk factors (like anger) should be addressed to mitigate risk.

Research specific to sexually violent fantasies has also been conducted. According to Fedoroff,²⁶ current studies that show a link between sexual sadism or masochism and sexual offenses are misleading. Many individuals who have never committed sexual offenses have deviant fantasies, and most do not act on them in violent ways. Some argue that violent fantasies are an individual's way of coping with feelings of anxiety and actually help curtail the commission of violent acts.³⁷ To investigate causality between sexually deviant behavior and crime, one must look beyond mere fantasies and thoughts.

Several factors need to be considered in assessing individuals' risk for acting out their violent fantasies. These include prior offense history (with a focus on the types of offenses and any links to violence) and the actor's age at the time of the first offense.^{34,35} Also important are psychopathological characteristics, including lack of concern or disregard for the welfare of others, sexual promiscuity, and impulsivity. People who naturally display concern for the welfare of others would be inhibited from acting on deviant fantasies that involve harming others.³⁸

In 1988, Person and colleagues³⁹ investigated the sexual experiences of undergraduate students. Respondents commented on recent sexual fantasies (i.e., within three months): 31 percent of men and 5 percent of women endorsed having had fantasies of forcing a partner to submit; 7 percent of men and 1 percent of women endorsed fantasies of whipping or beating a partner; and 6 percent of men had fantasies about torturing a partner.³⁹ Repeating the study 10 years later, investigators found that, at some point in their lives: 45 percent of men and 23 percent of women had had fantasies about forcing a partner to submit; 22 percent of men and 4 percent of women endorsed having had fantasies of whipping or beating

a partner; and 9 percent of men and 2 percent of women endorsed having had fantasies of torturing a partner.⁴⁰ Notably, less than 20 percent of subjects who had reported having a sexual fantasy (whether violent or not) endorsed ever acting on them.⁴⁰

Greendlinger and Byrne⁴¹ surveyed male undergraduate students about their sexual fantasies and activities. Subjects endorsed having had a fantasy of raping a woman (36%), bondage (66%), using force to subdue a woman (64%), using force for sex (56%), and wanting to hurt a partner during sex (45%).⁴¹ The authors found a correlation between the subject's fantasy intensity and their assessment of future likelihood of rape. Although the authors suggested that sexually aggressive fantasies may serve as models to prepare for later acts, predictive utility of their model was not established in their study.

Most studies of sexual offenders are retrospective assessments. For example, MacCulloch and colleagues⁴² reviewed 16 cases of persons convicted of a sex offense or a crime with sexual connotations. In their study, 13 subjects endorsed having had prior fantasies of rape, killing, or use of torture or bondage.⁴² Some endorsed having had sexual arousal associated with their violent sexual fantasies. The authors noted that any relationship was correlative and not necessarily causal.

Certain personality traits can increase the likelihood of a person committing a sexually violent act. These traits include hostility toward women (particularly by individuals who find satisfaction in dominating, humiliating, or controlling women) and pursuit of sexual acts absent commitment and emotional closeness.^{43,44} Key predisposing factors include history of suicide in the family and experiencing childhood violence at home.^{44,45}

Several studies have focused on a subgroup of sexual offenders: those who commit sexual homicide (in which the perpetrator rapes and murders the victim). Persons with comorbid antisocial personality disorder and paraphilias accounted for approximately 25 percent of this group in one study.⁴⁶ Sexual sadism was the most common paraphilia, accounting for about 37 percent of that subgroup.⁴⁶ The use of pornography was also associated with increased risk of sexual aggression; however, this correlation is found more frequently among offenders who grew up in households in which negative attitudes toward women were exhibited and offenders who experienced an inability to cope with anger and extreme

emotions.⁴³ Because of the rarity of sexual homicide (accounting for not more than 1% of homicides in the United States), few conclusions can be drawn about who is likely to commit these acts.

Chan and Beauregard⁴⁷ conducted a study aimed at identifying the psychopathological profile for 170 violent sexual offenders grouped into 96 nonhomicidal sexual offenders and 74 homicidal sexual offenders at a federal penitentiary in Canada. Comparing homicidal to non-homicidal offenders, they found a significant difference in offenders with personality traits that disinhibit behavior, including paranoid (37% versus 12%), borderline (55% versus 31%), schizotypal (19% versus 0%), and histrionic (14% versus 0%) traits. There was little difference between homicidal and non-homicidal offenders (58% versus 55%) regarding antisocial traits. They also found that homicidal sexual offenders were more likely to report deviant sexual fantasies 48 hours prior to the offense (22% versus 12%). Additionally, they concluded that homicidal sexual offenders were more likely to display deviant sexual behaviors, the most prevalent being sexual masochism (34% versus 4%), fetishism (27% versus 5%), exhibitionism (23% versus 1%), and homosexual pedophilia (14% versus 4%).⁴⁷

Precipitating factors for sexually assaulting and murdering a victim include experiencing psychosocial stressors, such as marital, employment, and legal problems.⁴⁸ Stein and colleagues³² reviewed crime scene analyses to examine motivations for sexual homicide and provide a descriptive analysis of necrophilia. Half of the subjects in their study of 211 offenders were in relationships, and other subjects raped their victims before killing them. In total, 16 of the 211 offenders engaged in necrophilic acts. Of those, nine had antisocial personality disorder, 13 were arrested for crimes of rape or attempted rape, and four took money or valuable possessions from the victim. The intentions in these cases ranged from outrage at society to a desire to destroy, degrade, and violate victims.³²

In other studies of necrophilic fantasies, a pattern has presented: persons often begin with a preoccupation with dead bodies, leading to attempts to get closer to dead bodies, for example by visiting cemeteries or taking jobs working with corpses.^{23,48,49} In some cases, individuals with necrophilia develop such strong fantasies and urges that they are unable to resist them. Incidents have been reported in which individuals have shown a preference for sex with a

dead body over sex with a living, consensual partner. Some of these individuals have gone so far as stealing bodies from mortuaries or committing homicide.^{49,50} Explanations for necrophilia in criminal cases have included loneliness, sexual inadequacy, humiliation, and the desire to dominate and degrade the victim.^{32,51} Another explanation is having a non-rejecting partner and being in a situation where the victim cannot act as a witness against the perpetrator.

An article especially relevant to *Valle* distinguished subjects who engaged only in violent fantasy play from subjects who have committed actual offenses. Klein³⁵ divided groups of people with deviant sexual fantasies into those who lived out their fantasy online only (e.g., those who visited group chat discussions) and those who pursued the fantasies in real life. Among them were individuals who pursued BDSM activities with consenting partners, individuals who were online offenders (e.g., those who transmitted child pornography), and individuals who offended in real life (e.g., harassers and rapists).

What remains a topic of debate is whether the Internet can be used as an acceptable means of coping (e.g., a “safety valve” as described by Klein) to explore fantasies in a noncriminal manner. In other words, does allowing people access to explore such fantasies online increase the risk of sexual aggression? Even if it increases the individual’s risk, at what point should it be a matter for the justice system?

Conclusions

Only a small portion of those who have deviant sexual fantasies go on to commit crimes. More research is required to understand the weight of sexually violent fantasies as indicators of future risk. However, any prosecution that relies on “common sense” or “gut instincts” could, without scientific justification, result in conflating information a juror finds appalling with criminal behavior. Bias based on emotionally provocative information could have a devastating impact on a person’s life and could cause interpersonal problems, shame, embarrassment, and imprisonment. Without sufficient education on paraphilia and violent fantasies, a lay juror is likely to act on emotions rather than on objective data.

The court’s opinion in *Valle* can help clinicians understand the application of the law. Although it is possible that online actions may constitute sufficient “acts” in some circumstances to establish a conspiracy, the court in *Valle* was not persuaded by the

prosecution’s argument that discussing real names, dates, and criminal activities constituted a present threat. Similarly, forensic mental health clinicians can help the trier of fact understand the individual’s risk for violence. Just as Berlin, Kraft, and Dietz shared their expertise with the court in *Valle*, other forensic psychiatrists may be asked to assist fact-finders in distinguishing between violent fantasies, criminal behavior, and one’s intent to commit criminal acts. Berlin and Kraft’s amicus brief and Dietz’s declaration to the court are supported by the state of current research. Sexual or violent fantasies by themselves do not predict violence.

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