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Paraphilic Coercive Disorder in the DSM: The Right Diagnosis for the Right Reasons

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Abstract The recommendation to include a Paraphilic Coercive Disorder (PCD) diagnosis in the DSM-5 represents an improvement over current options and would lead to the shrinking of the pool of individuals considered for detention as Sexually Violent Predators. A precise description of the diagnostic criteria for PCD would permit psychologists and psychiatrists to use more specific and narrow criteria for those who seek sexual gratification by coercing others to engage in unwanted sexual behavior. This might permit mental health professionals to abandon the Paraphilia NOS designation in favor of the more defined PCD in appropriate cases. Various critics have attacked the proposal on what appears to be misplaced ideological grounds. Not only should ideological concerns not play a part in a scientific debate, but the critics' predictions of how the PCD diagnosis would play out in the legal arena are likely wrong. Paraphilic Coercive Disorder would give the judicial system the best opportunity to most accurately identify the small group of men who have previously committed, and are likely in the future to commit, this type of predatory sexual violence.

Keywords DSM-5 · Paraphilic Coercive Disorder · Paraphilia NOS (rape) · Paraphilia NOS (nonconsent) · Civil commitment · Sexually violent predator laws · Sex offenders

A primary goal of the criminal justice system is to achieve the most accurate determination of truth based upon the most reliable information available and without consideration of extraneous or irrelevant factors. It is vital that judges and juries are able to rely upon the most accurate and scientific information available. To do that, expert witnesses who testify in court must themselves be able to rely on the most accurate scientific information available.

In cases involving a mental health diagnosis of a party, the expert generally will rely on what is included in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR; American Psychiatric Association, 2000). If something is excluded from the DSM because of nonscientific concerns, then the expert witness is denied access to the most reliable information. In turn, the courts are denied access to the most scientifically reliable information, and faulty, even dangerous, decisions may be made.

Ideological and political views may properly be used to influence public policy. However, they should not be used to influence science. I write because I am concerned that ideology and politics—and not objective science—might be used to evaluate the recommendation of the DSM-5 Work Group on Sexual and Gender Identity Disorders to include Paraphilic Coercive Disorder (PCD) in the DSM-5.

One type of litigation in which the DSM plays a significant role is the civil commitment of sexually violent predators (SVP). Currently, 20 American states have laws that permit the detention of a select group of individuals if they have a specific history of sexual offending, plus a mental abnormality or personality disorder that causes the person serious difficulty in controlling his sexually violent behavior, and the mental abnormality or personality disorder makes the person likely to engage in predatory acts of sexual violence if not confined to a secure facility. These strict requirements mean that a tiny[1] percentage

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[1] In the 6 years after the effective date of the Washington State SVP statute, only 5% of the sex offenders released from custody who met the statutory criteria for SVP commitment were even referred to prosecutors for consideration of filing a SVP petition. Prosecutors declined to file in two-thirds of those cases. Thus, the number of SVP petitions filed in Washington State was approximately 1.5% of the number of cases reviewed (Milloy, 2003).

of sex offenders released from prison every year are even considered for SVP assessment.

I am a lawyer. More specifically, I am a prosecutor who has spent more than 25 years working with issues related to sexual offending and other forms of interpersonal violence and, most specifically, with the interplay between mental health issues and the court system. I have been involved with issues regarding sexual offenders and the judicial system throughout my career. I served on the Board of Directors of the Association for the Treatment of Sexual Abusers, the Advisory Committee to the Washington State Sex Offender Treatment Provider Board, and on the Washington State Twin Rivers Sex Offender Treatment Program Advisory Committee. Those experiences, perhaps, are why the American Psychiatric Association (APA) was kind enough to invite me to serve as an Advisor to the Paraphilias subworkgroup of the DSM-5 Work Group on Sexual and Gender Identity Disorders.

I have handled more than a dozen SVP cases. I have worked on SVP cases and the issues relating to them since the first law was enacted in the state of Washington in 1991. I do not want to detain as SVPs those who should not be held nor do I want dangerous men released to the street because of irresponsible statements made by mental health professionals. I want accuracy.

That is why I support the subworkgroup's recommendation that PCD be added to the DSM-5 (see Table 1). I endorse it even though it will mean that some dangerous men currently considered under the SVP laws will not be able to be detained. I endorse it even though it will make my job harder. I endorse it because it will further my goal of allowing the court system to achieve the most accurate determination of truth.

Paraphilic Coercive Disorder gives the judicial system the best opportunity to most accurately identify the small group of men who have previously committed, and are likely in the future to commit, this type of predatory sexual violence.

This small group of men has long been recognized. A "deviant rape pattern" in which the male prefers raping over intimate sexual interaction has been documented in the sex offender literature for nearly 40 years (Freund, Seeley, Marshall, & Glinfort, 1972). This "deviant rape pattern" was more fully explained in 1986, nearly a half decade before the SVP laws were drafted. Freund, Scher, Racansky, Campbell, and Heasman (1986) found that a coercive preference is a type of courtship disorder, perhaps less severe than true sadism, but a distinct group. They noted that a preferential rape pattern is "connected with either an abnormally high tolerance of, or a preference for, an abnormally strong agonistic component in sexual interaction" (p. 34). Freund et al. concluded: "This outcome suggests that a substantial proportion of rape-prone males have a special erotic affinity for, or are erotically less inhibited than normals by, situations which are characteristic of the courtship disorders" (p. 30).

Table 1 Diagnostic criteria for Paraphilic Coercive Disorder proposed by the Paraphilias subworkgroup of the Sexual and Gender Identity Disorders Work Group for DSM-5

A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies or sexual urges focused on sexual coercion
B. The person is distressed or impaired by these attractions, or has sought sexual stimulation from forcing sex on three or more nonconsenting persons on separate occasions
C. The diagnosis of Paraphilic Coercive Disorder is not made if the patient meets criteria for a diagnosis of Sexual Sadism Disorder

In their study on multiple paraphilic diagnoses among sex offenders, Abel et al. (1988) identified 21 paraphilias, including one they labeled "rape."

Kafka (1991) described a specific rapist who met the criteria for a PCD when he wrote about successfully treating him pharmacologically. He noted that this individual could belong to a larger group of such men who might meet the current proposed DSM-5 criteria for PCD (M. Kafka, personal communication, March 16, 2010).

Given these findings, and his own analysis, David Thornton, Ph.D., another Advisor to the Paraphilias subworkgroup, concluded: "There is significant empirical support for the existence of a distinctive coercive paraphilia among men convicted of rape. This paraphilia involves preferential sexual arousal to forcing sex upon a woman in a way that she obviously experiences as coercive….Although conceptually related to sexual sadism, it represents a distinct paraphilia" (Thornton, 2010, p. 416).

Two other advisors have, for differing reasons, recommended against a PCD diagnosis. Quinsey's (2010) critique is that since coercive sex can have evolutionary (Darwinian fitness) benefits, it should not be called a pathology. Knight (2010) is concerned that PCD lacks a defining taxometric. However, academic conjecture about the reproductive fitness of psychological traits in the theorized evolutionary environment is not an actual or practical basis for excluding a condition from the DSM, and being unable to define a condition with perfection should not prevent the scientific field from acknowledging that the condition exists.

The treatment of sex offenders presupposes the value of mental health intervention for men with a clinical diagnosis of a mental illness. Presumably, those who provide mental health treatment to individuals convicted of forced sexual assaults are providing an appropriate diagnosis when they submit written reports or bill insurance companies.

In the absence of a PCD diagnosis, this "distinct paraphilia" is now being documented as Paraphilia Not Otherwise Specified (rape) or Paraphilia Not Otherwise Specified (nonconsent) or some similar terminology. This status quo can be improved.

The authors of the DSM-IV-TR noted that their highest priority was to make the DSM "practical and useful for

clinicians by striving for brevity of criteria sets, clarity of language, and explicit statements of the constructs embodied in the diagnostic criteria" (American Psychiatric Association, 2000, p. xxiii). The role of the DSM in forensic settings was explicitly understood: "…when the presence of a mental disorder is the predicate for a subsequent legal determination (e.g., involuntary civil commitment), the use of an established system of diagnosis enhances the value and reliability of the determination" (American Psychiatric Association, 2000, p. xxxiii).

The addition of PCD enhances this quest for both clarity and reliability. A precise description of the diagnostic criteria for PCD would permit psychologists and psychiatrists to abandon the Paraphilia NOS designation in favor of the more defined PCD in appropriate cases. Describing a disorder with more clarity is a specific and laudable goal of the DSM. The adoption of PCD accomplishes that goal. To a lawyer interested in getting the right answer, the application of a more specific PCD model would be an advance and one which would protect potential SVPs from a more general diagnosis.

Since the DSM-5 Work Group on Sexual and Gender Identity Disorders announced its proposals, there has been some productive feedback and discussion about their proposals. Many comments have spawned intelligent, reasoned debate. Others have made broad and unhelpful attacks on the character of the committee. Those gratuitous comments are ignored here. I write out of concern that some of the critical attacks reveal political and/or ideological concerns not about the proposal per se, but what the authors perceive as the legal ramifications of those proposals. Those concerns are wholly misplaced. Not only should ideological concerns not play a part in a scientific debate, but the critics' predictions of how the PCD diagnosis would play out in a legal arena are wrong.

One critic recently claimed: "The [SVP] statutes are a well meaning effort to reduce the threat to public safety posed by those recidivist sexual offenders who have received prison sentences that are judged to be too short" (Frances, 2010a). This statement is as inaccurate as it is cavalier. SVP statutes were drafted in an effort to respond to very rare and difficult situations: What should society's response be when the best available information indicates that a previously convicted particular individual is very likely to violently sexually assault a stranger if given that opportunity? This involves the balancing of the individual's rights with the equal obligation of authorities to protect innocent members of the public from that danger.

SVP laws are not efforts to impose additional punishment on an individual because a past sentence was "too short." They are meant to protect innocent, vulnerable members of the community. That erroneous comment, however, perhaps best illustrates the ideological view of the commentator.

This same critic (Allen Frances, M.D.) disparaged the recommendation to include PCD in another article. Most troubling is he *began* that argument with this: "Paraphilic Coercive Disorder would expand the pool of sex offenders who are eligible for indefinite civil commitment…" (Frances, 2010b). Again, an ideological view on how a diagnosis may be used in the legal arena is a misguided critique of whether it is scientifically appropriate to include it in the DSM-5.

In the first-mentioned article, Frances showcased the heart of his argument: "Although the SVP statutes have twice passed Supreme Court tests, they rest on questionable constitutional grounds and may sometimes result in a misuse of psychiatry" (Frances, 2010a).

In law, the standard of whether a statute is on sufficient constitutional grounds is what the United States Supreme Court says about it. SVP laws have three times[2] been upheld as constitutional by the United States Supreme Court. Yet, the critic insists in his belief that these laws are wrong or of "questionable constitutional grounds." He maintains that view as part of his argument attacking the validity of the PCD diagnosis. This merely demonstrates that the concerns raised about the inclusion of the PCD diagnosis are ideological, or perhaps legal, but not scientifically based. The phenomenon of psychiatrists and psychologists engaging in legal analysis (and letting that influence their professional roles) is dangerous, in part because they are apt to do exactly what Frances did: Get the law wrong. The truth is that Dr. Frances is mistaken in his concern that PCD might "expand the pool of sex offenders who are eligible for indefinite civil commitment." PCD will not expand the pool; it will shrink it.

Currently, the men who would fall within the PCD diagnosis are not being ignored by the SVP laws or by people like me. They are still being caught in that "pool." They are falling into the Paraphilia Not Otherwise Specified diagnosis with a (nonconsent) or (rape) descriptor.

Ironically, others have argued that the Paraphilia Not Otherwise Specified diagnosis is unfair to use in SVP cases because it is too vague or unreliable. These arguments were rejected by Packard and Levenson (2006), who demonstrated that psychologists' ability to reliably diagnose paraphilias, including Paraphilia Not Otherwise Specified, is no different than the ability of mental health professionals to diagnose psychiatric conditions in general.

Nevertheless, making the Paraphilia Not Otherwise Specified diagnosis more specific would respond to those criticisms. A PCD diagnosis would theoretically replace the Paraphilia Not Otherwise Specified diagnosis in many circumstances, and because it would be more specific, it would be apt to capture fewer men. Thus, the PCD diagnosis would *shrink* the pool of potential SVP candidates.

[2] A federal civil commitment statute was upheld by the United States Supreme Court on May 17, 2010. United States v. Comstock, 560 U.S. ___, (2010), 2010 WL 1946729 (US) (case 08-1224).

Which is precisely what I as a career prosecutor want. The civil commitment of sexually violent predators should involve the identification of only those who properly qualify under the law. The narrower the definition of those eligible for civil commitment, the better. PCD is a more precise—i.e., narrower—definition under which to consider those men who derive sexual pleasure by the use of force or coercion on their subjects. It is a more precise definition than Paraphilia Not Otherwise Specified. More precise means it is more narrow (shrinking the pool). It also means potentially making a diagnosis more accurate.[3] The result would be to increase the ability to properly identify those who should be considered as sexually violent predators.

My goal as a lawyer is to get the right answer. It doesn't take a taxonomic analysis to know that there are men in the world who seek sexual gratification by coercing others to engage in unwanted sexual behavior. It doesn't require years of study to document that there are men whose urges, fantasies, and behaviors satisfy the PCD descriptors. It is abundantly evident those people exist. A short period of time practicing in this field gives a disinterested person that knowledge.

The APA faces a moment of intellectual challenge. For more than a decade, the opinion of the APA about SVP laws has been unambiguous and unequivocal. A Task Force Report of the APA entitled *Dangerous Sex Offenders* (American Psychiatric Association, 1999) ended with these declarations:

"In the opinion of the Task Force, sexual predator commitment laws represent a serious assault on the integrity of psychiatry….In the opinion of the Task Force, psychiatry must vigorously oppose these statutes in order to preserve the moral authority of the profession and to ensure continuing societal confidence in the medical model of civil commitment" (American Psychiatric Association, 1999, p. 173).

To emphasize its position and its commitment to "vigorously oppose these statutes" the APA filed amicus briefs in two separate United States Supreme Court cases, urging the SVP statutes be stricken as unconstitutional. In the first case to reach the U.S. Supreme Court (*Kansas v. Hendricks*), the APA filed a friend-of-the-court brief arguing the SVP laws would be a form of "double jeopardy," and expressing concern that "only the prosecutor, representing the State, can bring the action, which then has all the outward appearance of a criminal trial" (American Psychiatric Association, 1996, pp. 7, 13).

The APA argued again in *Kansas v. Crane*: "What the State should not be permitted to do under the Constitution is to evade the criminal justice system, when dissatisfied with decisions it has made, by setting up an alternative regime broadly authorizing the indefinite locking up of individuals based on risk of future offenses—outside the *parens-patriae* based tradition of medically justified civil commitment for those suffering severe mental illness and in disregard for the tight limits on permitted preventive detention" (American Psychiatric Association, 2001).

Each time the APA position was rejected and the statutes at hand were upheld.

Now the APA faces the challenge of setting aside its ideological views and adopting the scientific proposals of its committee. One commentator has been unable to separate ideology from science. I write in the hope and anticipation that the APA will rise to the challenge.

Ironically, by accepting the DSM-5 committee's recommendation, they can adopt the best science and simultaneously limit the reach of the SVP laws.

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[3] A second criticism raised of the PCD diagnosis is that it may be based exclusively on "behaviors." That critique is odd. A pattern of behavior is used as the basis for a variety of diagnoses in those who have committed criminal behavior, such as Antisocial Personality Disorder (301.7) and Conduct Disorder (312.8x) (American Psychiatric Association, 2000).

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