

# Forensic Implications of DSM-V's Pedohebephilia

Renee Sorrentino, MD

Harvard Medical School

Institute for Sexual Wellness

[www.instituteforsexualwellness.org](http://www.instituteforsexualwellness.org)



# Why am I listening to a Forensic Psychiatrist?



## SDP Commitment

- 1) History of sexually harmful conduct
- 2) **Mental disorder or “abnormality”**
- 3) Risk of future sexually harmful conduct
- 4) Some connection between abnormality and danger



## Kansas v. Hendricks, 1997

- Leroy Hendricks incarcerated for Child Molestation
- Near release said he “could not control his sexual desires for children & will most likely molest again”



## Kansas v. Crane, 2002

- Michael Crane dx exhibitionist & ASPD
- Offense behaviors were willful, not uncontrollable
- SDP does not require “irresistible impulse”





## Outline

- Background
  - Role of Forensic Psychiatrist
- Forensic Implications of Pedohebephilia
  - Civil Commitment
    - Sexually Dangerous Person
  - Criminal Matters
- Survey of Psychiatrist
- Conclusions

## DSM Disclaimer

- DSM-IV-TR specifically cautioning against the use of informal labels in the forensic arena:
  - [W]hen 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)

## APA Opposes Civil Commitment of Sex Offenders

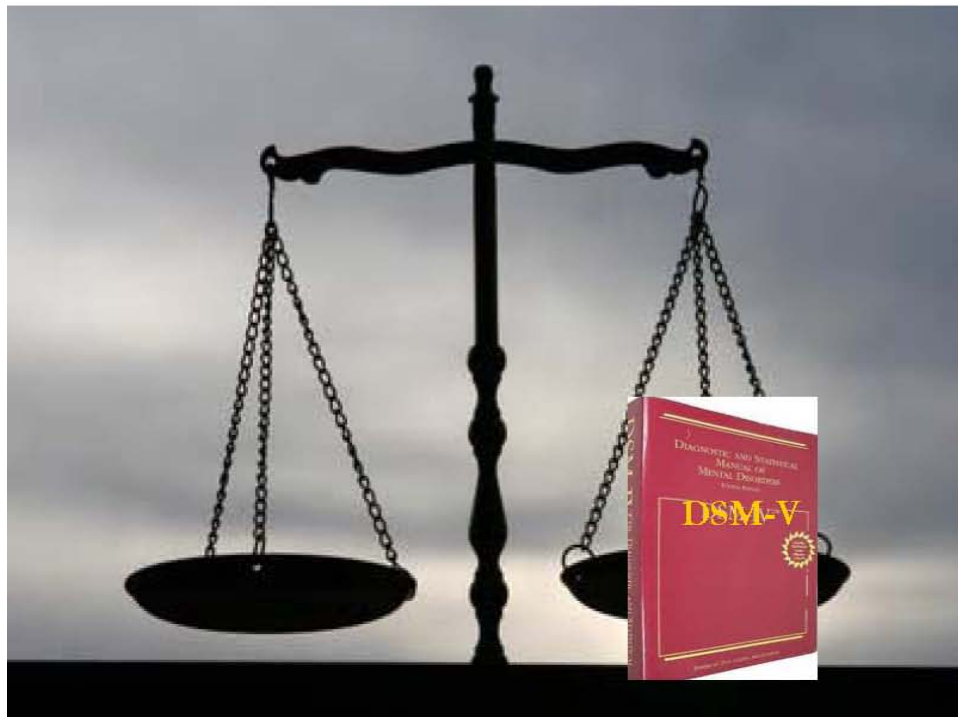
The task force agreed

- Statutes bend civil commitment to serve essentially non-medical purposes & threaten to undermine the legitimacy of the medical model of commitment
- These statutes have the effect of defining mental illness in terms of criminal behavior.
- This is a misuse of psychiatry, because legislators have “used psychiatric commitment to effect nonmedical societal ends.”



AMERICAN PSYCHIATRIC ASSOCIATION

Wash., D.C. • 20002 • 202-462-4000 • www.psychiatry.org



## Pedohebephilia Criterion B

- One or more of the following signs or symptoms:
  - (3) repeated use of, and greater arousal from, pornography depicting prepubescent or pubescent children than from pornography depicting physically mature persons, for a period of six months or longer

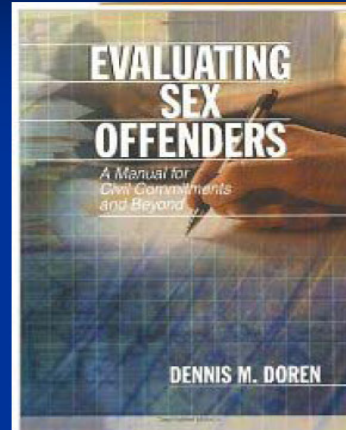
## DSM-IV-TR

- No current diagnosis to address Hebephilia
- No diagnosis suggests no disorder
  - Paraphilia Not Otherwise Specified (NOS)
- If DSM-V proposals accepted
  - Pedohebephilia is a disorder, disorders cause dysfunction/suffering, warrant treatment, including commitment

## Hebephilia=Paraphilia NOS

- Manual written for the express purpose of assisting in the civil commitment
- The attraction is not pathologic, but the degree of attraction can be

Doren, 2002



## Looking Forward: DSM-V SDP

- Pedohebephilia more likely to be accepted as a disorder eligible for commitment
- Commitment “day to life” in the absence of sound scientific disorder
- No clear treatment or need for treatment-
  - Translates commitment into detainment
  - Unable to prove that they are no longer a danger in order to be released



## Lessons from the Courts



## Hebephilia: SDP

- United States v. Carta, 2009
- **Courts Addressed:** Whether Hebephilia, or the sexual attraction to adolescents, qualified as a serious mental disorder that could justify Carta's civil commitment?

## U. S. v. Carta, 2009

- Todd Carta, MA
- Convicted of Child Pornography
- SDP proceedings
- Judge ruled hebephilia is not a basis for SDP



## U.S. v Carta Ruling

- Rejected Hebephilia as eligible for civil commitment
  - Absence of any evidence that the DSM-IV-TR residual category of “Paraphilia NOS” was meant to include Hebephilia
  - Inherent problems in operationalizing Hebephilia make it an “unworkable” diagnosis
  - “Most importantly... limited and scientifically problematic” research on the construct, most of it conducted by a single research group

## U.S. v. Carta, 2010

- Mental DO need not be one so identified in the DSM to meet the statutory requirement
- Error to say DSM paraphilia excluded fixation on teenagers accompanied by pattern of conduct such as Carta's

## U.S. v. Shields, 2008

- Jeffrey Shields of MA
- Convicted of Child Porn, 2002
- Found SDP. Appealed
- Court held that professional literature may establish hebephilia as a “group identifier or label,” not as a generally accepted clinical diagnosis



## U. S. v. Shields, 2011

- A "sexually dangerous person" is defined by:
  - (1) "has engaged or attempted to engage in sexually violent conduct or child molestation" and
  - (2) "is sexually dangerous to others."
  - sexually dangerous to others = "the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released."

## U.S. v. Abregana, 2008

- Jay Abregana, Hawaii, convicted of CP & Sexual Assault
- Petition filed for SDP
- Not Found SDP
- Experts disagreed with whether hebephilia was "a serious mental disorder"





## U.S. v. Abregana Ruling

- Conclusion of Law:
  - United States has not proven that Abregana "suffers from a serious mental illness, abnormality, or disorder"
  - Judge opined that "Paraphilia NOS: Hebephilia" might qualify as a clinical diagnosis, but that it did not reach the level of a "serious mental disorder" qualifying Abregana for civil commitment

## Hebephilia in SDP Proceedings

- Reliance on the dx of Paraphilia NOS/Hebephilia violates due process
  - The State must prove the detainee has an actual, valid mental illness or disorder
  - Paraphilia NOS (Hebephilia) diagnosis does not satisfy Frye or Daubert standards of admissibility

## State v. Lamure, 1992



- David Lamure, NM
- Convicted of Sexual Contact With Minors, Criminal Sexual Penetration
- Appealed Convictions

## State v. Lamure, 1992

- Expert diagnosed Lamure with Hebephilia
- Opined Lamure's claim of a noncoercive relationship with the victim was more consistent with Hebephilia than the victim's claim of a coercive relationship.
- Court rejected argument.

## Hebephilia: Criminal Arena

- State v. Lamure, 1992
  - Concept of introducing Hebephilia as a means to excuse criminal conduct
- Does this set the stage for arguments against Criminal Responsibility/Insanity? Diminished Capacity?
  - Sexual attraction to adolescents is neither a “sexual perversion” nor a legitimate psychiatric condition (Hazelwood & Burgess, 2009; Lanning, 2001)

## Paraphilia: Insanity Defense

Mental  
Disorder  
“Paraphilia”

Inability to  
conform  
conduct to  
requirements  
of the law

Not Guilty  
by Reason  
of Insanity

## Paraphilias: Forensic Implications



## Hebephilia: Psychiatric DO

- If Hebephilia is sufficient for civil commitment then
  - Hebephilia is a mental disorder which impairs function and requires psychiatric treatment
  - Hebephilia may, like many mental disorders, cause disabilities
    - Impair one's capacity to parent/custody
    - Impair one's ability to work/fitness for duty



## Case : Dr. Pedi

- Dx: Pedohebephilia
  - Is Dr. P able to perform the functions of his job?
  - Is he disabled?
  - Is he eligible for disability?



## Expert Consensus

- American Academy of Psychiatry and the Law conference, Oct. 2010
  - Forensic psychiatrists voted 31:1 against Pedohebephila