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The Online Sex Sting

MICHAEL CRYAN

Society and the media have created a popular and sensationalized profile of the American sex offender. In dramatization, offenders are often portrayed as white, middle-aged, single and male; in actuality, sex offenders are a much more complex group of individuals. Research on this large, profoundly heterogeneous mix has attempted to sort offenders into schemas based upon their type of offending (Robertiello & Terry, 2007). Regardless of their classification, however, perpetrators can be male, female, straight, gay, bisexual, married, single, and of any race or economic status. One of the sex offender subgroups created by Robertiello and Terry is that of online predators. This type of sex offender uses the internet to collect child pornography and solicit underage children for acts of sex. As with other sex offenders, online perpetrators can be vastly different from one another, and some may be more dangerous than others. In an effort to combat both child pornography and online solicitations, police departments, under the mandate of the United States government, have engaged in undercover internet sex stings. These stings work to capture online offenders before they meet any underage person in the physical world. However, the continuation of their use has called both their efficacy and morality into question. This paper will examine in detail who online predators are, how the stings are implemented, and whether or not they act as a form of “net-widening” among the online sex offender population.

Chapter 265, Section 26C of the General Laws of the Commonwealth of Massachusetts states that anyone who entices a child under the age of 16 shall be punished by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two-and-a-half-years, or by both imprisonment and a fine of not more than $5,000. Within this law, the term “entice” is legally defined as “lure, induce, persuade, tempt, incite, solicit, coax, or invite” (Mass. Gen. Laws Ch. 265, § 26C, 2014). In layman’s terms, this definition includes conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, or a similar offense (Child Enticement & Exploitation, n.d.).

Section A: Background & Data
Public fear of online sexual solicitations targeting minors resulted in the design of the Youth Internet Safety Survey in 2000 (Mitchell, Jones, Finkelhor, & Wolak, 2013). Since its inception, the survey has been conducted at five-year intervals. Solicitations as defined by and studied in the survey ranged from benign interrogatives (i.e. “What’s your bra size?”) to cases that pose a high risk of sexual assault occurring offline. The Youth Internet Safety Survey has been conducted at five-year intervals since its inception in 2000. These studies are indicative of an incredibly small subset of solicited minors that have had sexual contact at meetings occurring offline.

The number of solicited youth stood at 1% in the 2010 study (Mitchell, Jones, Finkelhor, & Wolak, 2013). The three YISS studies have also indicated that girls and older youth (aged 15 to 19) are at a higher risk of receiving online solicitations than boys and younger youth. Overall, however, the occurrence of the enticement of youth actually appears to be on the decline in recent years (Wright, 2014), although instances of online aggressive sexual solicitation increased between 2000 and 2005 (Mitchell, Finkelhor, & Wolak, 2007). In 2000, 19% of youth aged 10 to 17 received sexual enticement, while in 2005, this statistic decreased to 13%. By 2010, the number had dropped to 9%. This decline is a result of a reduction in youth who were being asked to talk about or disclose sexual information online (Mitchell, Jones, Finkelhor, & Wolak, 2013). The decline is truly compelling given the marked increase in youth internet activity during the decade of the 2000s (Mitchell, Jones, Finkelhor, & Wolak, 2013). Such a decline may have occurred as a result of changes in youth usage of the internet, widespread dissemination of internet safety resources, or an increase in online law enforcement activity.

Section B: Research on the Policy
The objective of the internet sex sting operation is, through the use of police deception, to arrest those adults who have been seeking a sexual relationship with a minor. In these cases, law enforcement acts under the guise of a minor in order to draw out the offender. The stings should, theoretically, prevent the offender from having future contact with minors and serve as a deterrent to other potentially deviant members of the online community. Rulings in the United States have allowed law enforcement agencies to conduct internet sex stings, and several other parts of the world have been following suit (Wright, 2014). However, there is data that suggests that law enforcement has been reducing its usage of online stings. In the third YISS, a decrease in the number of arrests made via an internet sex sting was reported. Because of the decline, it has been suggested that law enforcement have shifted their focus to instead target child pornography (Wright, 2014). The demise of NBC’s To Catch a Predator in 2007 is perhaps another contributor to the decreased usage of internet sex stings. The show revealed that Louis Conradt, a suburban Dallas prosecutor, had engaged in sexually explicit chats.
online with an adult posing as a minor (Gold, 2008); soon after he committed suicide. As a result, Conradt’s sister, Patricia Conradt, filed a $105 million dollar lawsuit against NBC stating that the actions of To Catch a Predator directly caused her brother’s suicide. NBC Universal and Patricia Conradt settled for an undisclosed amount after it was determined that the suicide was foreseeable, that law enforcement should have protected Conradt, and that NBC acted with deliberate indifference (Gold, 2008). It is conceivable that a rollback of police usage of the internet sex sting was due in part to the bad taste left in the mouths of the public following To Catch a Predator’s collapse.

In the cases that the undercover stings are meant to target, an offender arranges a physical meeting with a minor, presumptively for a sexual reason. However, a second type of offender that is commonly conflated with the “contact” offender is the “fantasy-only” offender. The “contact” offender is a bona fide predator, who commonly has a history of child sexual abuse. The “fantasy-only” offender is another subgroup whose behavior does not extend beyond the collection of child porn for the purpose of masturbation (McCarty, 2010).

Sexual offenders are, clearly, a heterogeneous group, but the laws often lump the two different groups of offenders together. This grouping is based on the “harm thesis,” which states that looking at porn causes men to commit sex crimes (McCarty, 2010). Of course, the data that has been collected on child sex crimes paints a different, very complex picture. Recidivism data on 201 offenders over a two-and-a-half-year period suggests that offenders who had child pornography charges did not go on to commit a contact offense during the follow-up period. In addition, in a survey of 290 “boy-attracted pedosexual males,” 84% of anonymous respondents reported that viewing child porn involving boys replaced the need to be with an actual child, and 84.5% reported that viewing the erotica did not increase their likelihood to molest a boy (McCarty, 2010).

Contrary to both popular belief and public perception, there is no standard “profile” of a sex offender. However, in two studies cited by McCarthy, antisocial orientation was found to be significant in sample populations. Also contained within sample sets of sex offenders was a history of contact with mental health services (41% of offenders) and a history of major depression (21% of offenders). Offenders who are arrested as a result of proactive policing, namely, internet sex stings, often try to justify their deviant behavior through three distinct cognitive distortions—refutation, minimization, and justifications/rationalizations (DeLong, Durkin, & Hundersmarck, 2010).

Minimization is defined as a denial of the extent to which the offense occurred or a denial of the intent to commit an offense at all (ultimately, a denial of responsibility). Justification/rationalization refers to the offender devising an inaccurate yet self-satisfying reason for their behavior, such as denying that the victim was harmed or that the act was inherently immoral. And finally, refutation refers to a full, outright denial of the offense. A study of 18 sex offenders by DeLong, Durkin, and Hundersmarck confirms that child sexual abusers have distorted cognitions regarding the nature of their sexual conduct. The men in the study either claimed ignorance as to the age of the fictitious minor (this study having been conducted via stings) or attempted to deny sexual motivation for traveling to meet a minor.

Section C: Unintended Consequences and/or Alternatives

The use of the internet sex stings by police as a method for snaring sex offenders online has inherently encouraged the use of police deception. In addition, the stings are predicated on the assumption that a crime was imminently going to occur, and the enticement charge becomes punitive on what might happen. Sex offenders who are charged with online enticement commonly use defenses such as free speech, police entrapment, factual impossibility, and egregious government conduct. For the purposes of this paper, the entrapment and factual impossibility defenses as they relate to the use of online stings will be closely examined.

The basic premise of the entrapment defense is that the crime (in this context, the enticement of a minor) would not occur without the behavior of the government (the usage of a sting), but the subtleties and nuances of this defense are much more complex. The defendant in a case of alleged entrapment argues that the police officers induced the defendant to engage in an act of criminality that they, of their own free will, would not commit otherwise. The courts have allowed the usage of undercover sting operations through case law such as Sorrells v. United States (1932) and United States v. Russell (1973) (Peters, Lampinen, & Malesky, 2013). It lies on the defense to prove that the defendant lacked predisposition.

In a study conducted by Peters, Lampinen, and Malesky, a mock trial was established simulating the proceedings of an enticement case. It was found that jurors in the mock trial were less likely to rule the defendant guilty if the action of solicitation was initiated by the undercover police officer. However, jurors who claimed to have a higher crime control orientation were more likely to charge the defendant with the crime regardless of the legality or fairness of the procedure, while those with a higher due process orientation were more likely to scrutinize the legality and means by which the offender...
was caught (independent of the crime itself) and exonerate the defendant (Peters, Lampinen, & Malesky, 2013). Implications of this study include the adequate training of agents engaging in undercover sex sting operations in order to avoid procedural pitfalls, and consideration, by both prosecutors and the defense, of the initiator of the sexual solicitation.

The impossibility defense is another option available for the defendant to use in the case of an online sting. This particular defense may be used when “the actions which the defendant performs or sets in motion, even if carried out fully as he desires, would not constitute a crime” (Congressional Research Service, 2011). Factual impossibility may exist when the objective of the defendant has been knowingly criminalized by the law, but an element of the case unknown to the defendant would prevent him from accomplishing the objective of the crime (in the case of online sex stings, there is no child to assault—therein lies the factual impossibility). Several states have specifically refused to recognize an impossibility defense of any kind, and attempt, as defined by the Model Penal Code, to include instances when the defendant acted with the intent to commit the offense and acted in a way that would lead to a crime if the offender’s circumstances and the circumstances of the situation were as he had believed them to appear. The intricacies of both the entrapment and the factual impossibility defenses, as well as the established case law of the nation, allow for the overall permissibility of the internet sex sting.

Raphael Cohen-Almagor cites four different sources that can take responsible action to prevent online predators from reaching and enticing these minors: parents, the educational system, Internet Service Providers, and other business companies. Products such as Net Nanny and Surf Watch are easy to configure and affordable, and will allow parents to screen everything that is passing through a computer (Cohen-Almagor, 2013). Schools can also aid in disseminating information about legitimate and illegitimate modes of sexual behavior to help young people deal with their normative and healthy curiosity about sex. Schools can offer preventative messages about the online advances of inexperienced youth that stem from dangerous adults. Internet Service Providers can be diligent in policing their interest groups and swiftly closing those that do not conform to normal behavior or legal sex-oriented topics.

Social networking sites have also taken it upon themselves to monitor their networks for inappropriate content, such as child pornography, in the name of trust and healthy business (Cohen-Almagor, 2013). Online spaces are modes by which trusting and close relationships are often established, and are proactively monitored using instruments such as image-scanning technology and other types of software. American Internet Service Providers are required to report incidences of child pornography to the National Center for Missing and Exploited Children, who will, in turn, involve law enforcement (Cohen-Almagor, 2013). This relationship between the ISPs and NCMEC is cooperative and is good for the business of the ISPs for obvious reasons.

Third-party businesses often comply with entities such as the NCMEC in order to block the flow of child pornography and prevent their companies from making money via immodest means (Cohen-Almagor, 2013). Credit card companies like MasterCard, Visa, American Express, and Discover cooperate with NCMEC through methods such as the Financial Coalition Against Child Pornography, which aims to block online monetary transactions related to the distribution of child porn. In the event of a criminal investigation, companies will attempt to track sellers and buyers. Although these initiatives have caused some successful disruptions in the circulation of child pornography, they have also caused a resultant shift of offenders toward less recognizable payment brands and methods.

Vigilantism against online sex offenders, in conjunction with undercover police stings, has also occurred. In the case of Perverted Justice, the vigilantism has been publicly glamorized. According to their website, they are a secular, not-for-profit organization that pursues and actively seeks to punish online sex offenders. Perverted Justice, or PJ has worked with law enforcement to conduct stings and collect evidence against sex offenders online (“Frequently Asked Questions,” 2008). PJ has been involved with NBC’s To Catch a Predator as well as large-scale sting operations conducted by law enforcement. Although vigilante groups such as PJ have garnered a degree of public support, they are not an official, publicly-funded government entity. However, they do have a financial investment in the capture of online sex predators.

Section D: Conclusion and Unresolved Questions
As a form of proactive policing and sexual assault prevention, I do not support the use of undercover, online sex sting operations. This type of policing activity is a form of “net-widening” in the criminal justice system. It is supported by the need for preventative arrest and conflates truly dangerous people with those who engage in sexually deviant behavior but would never harm a child. The use of an undercover sting is prone to punish people for their thoughts, not their actions. Undercover stings actually disrupt the criminal justice system, turning it from adversarial, where the court serves as an impartial referee between the prosecution and the defense, to inquisitorial, where the court or a part of the court is actively
involved in investigating components of the case. The court loses impartiality and becomes a third and active player in a case. Hypothetically, the government can change the rules at their own disposal.

During a judicial proceeding, perjury is defined as the offense of willfully telling an untruth after taking an oath or swearing an affirmation. Thus, those involved in a court case are legally bound by their word. However, before the case ever reaches a court, a police officer, through the use of police deception, engages in a government-sanctioned act of lying. Police officers are taught and encouraged to utilize deceptive practices, and are rewarded for success (Alpert and Noble, 2009). This behavior creates a double standard within the legal and criminal justice systems.

In their study, Alpert and Noble cite a “deceptive continuum” that exists within the policing of our society. At one end of this continuum are the excusable and justifiable lies (which are made in jest or defendable based on circumstances), and on the other end is malicious, intentional, and deceptive conduct. Such conduct includes deceptive action in a formal setting (i.e. in court or during an investigation), observing the so-called “code of silence” between police officers, and the creation of false evidence against a defendant. Any conduct of this kind will permanently destroy an officer’s credibility. As the researchers note, however, these deceptive practices on the behalf of the police are unlikely to cease.

An argument against the use of deception is the possibility that it may be used in other situations. If undercover officers are rewarded for the successful deception of the American public, what prevents them from expanding the use of deception to elicit other results, such as a false confession, that would help them succeed personally or professionally? The courts have upheld the notion that officers can use deceit to elicit a confession so long as their actions do not “shock the conscience” of the court or would otherwise impel an innocent person to wrongfully confess (Alpert & Noble, 2009). It could be argued that by encouraging deceit in these situations, the courts may be viewed as hypocritical.

As one who hopes to become a parent, I sympathize with the desire to protect children from dangerous adults. The presence of sexually deviant men in online chat rooms geared toward young people is, statistically speaking, not the problem at large when it comes to preventing sex crimes. 60 to 80 percent of sexual assaults occur within the context of a pre-existing relationship (Wright, 2014), but the laws in the United States are tailored to the image of a “super-predator” who is white, unmarried, and grooms unsuspecting kids in chat rooms before kidnapping and raping them. If we, as Americans, want to alleviate the problem of sex crimes, we need to examine the true heart of the issue at hand.

References


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**About the Author**

Michael Cryan is a second-year student majoring in Chemistry and minoring in Criminal Justice. He submitted this work as a term paper for Dr. Richard Wright’s Sex Crimes class in the fall of 2014. He plans to pursue his MS in Forensic Science upon completion of his undergraduate degree. Michael wishes to thank Benjamin Lombard of Bridgewater State University and Laura Gama of Rice University for their proofreading and constructive criticism.