

# 14-2710

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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UNITED STATES OF AMERICA,

APPELLANT,

v.

GILBERTO VALLE, AKA SEALED DEFENDANT 1

DEFENDANT-APPELEE,

MICHAEL VANHISE, AKA SEALED DEFENDANT 1, ROBERT  
CHRISTOPHER ASCH, AKA CHRIS, RICHARD MELTZ, AKA RICK,

DEFENDANTS.

On Appeal from the United States District Court  
for the Southern District of New York

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**BRIEF OF *AMICI CURIAE* FREDERICK S. BERLIN, M.D, PH.D., AND  
CHRIS KRAFT, PH.D., IN SUPPORT OF AFFIRMANCE**

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**Other Authorities**

*1992: The 64th Academy Award Winners*, The Oscars,  
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*University Students*, 18 CANADIAN JOURNAL OF HUMAN SEXUALITY 135 (2009).  
 ..... 10

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## **STATEMENT OF INTEREST<sup>1</sup>**

Frederick S. Berlin, M.D., Ph.D., is an Associate Professor in the Department of Psychiatry and Behavioral Sciences at the Johns Hopkins University School of Medicine, an attending physician at the Johns Hopkins Hospital, and the Director of the National Institute for the Study, Prevention and Treatment of Sexual Trauma. Dr. Berlin founded the Johns Hopkins Sexual Disorders Clinic, and is the director of the Johns Hopkins Sexual Behaviors Consultation Unit. Dr. Berlin's work has included the evaluation and treatment of patients with sexual disorders, such as Pedophilia, Voyeurism, and Exhibitionism.

Chris Kraft, Ph.D., is the Director of Clinical Services at the Johns Hopkins University School of Medicine. He is also a clinical/research psychologist and assistant instructor at the Sexual Behaviors Consultation Unit in the Department of Psychiatry at the Johns Hopkins University School of Medicine, and an instructor in human sexuality for psychiatry residents and medical students. His expertise lies in compulsive and addictive sexual behaviors and sexual paraphilias. He is also a certified sex therapist whose work has included evaluation and treatment of a wide range of sexual and gender conditions.

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(c)(5), no party's counsel authored this brief in whole or in part, and neither any party, nor any party's counsel, contributed money towards the preparation of this brief. No person other than amici or their counsel contributed money that was intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief.

The issue at the heart of this case—the exploration of sexual fantasies—has been the subject of significant clinical experience and research by Dr. Berlin, Dr. Kraft, and other psychiatrists. Dr. Berlin and Dr. Kraft submit this brief to present relevant scientific knowledge that can provide context for the Court’s review of whether the fantasies at issue here are consistent with fantastical and non-criminal behavior.

## I. INTRODUCTION

Every day, thousands of people around the globe express sexual fantasies online. Most of the people who engage in such fantasies are law-abiding, and their sexual tastes are considered normal and unremarkable. But some of these law-abiding individuals are aroused by transgressive fantasies that are considered immoral, taboo, or dangerous. The attraction of such a fantasy can arise from the transgressive quality itself; that is, it is precisely because of the perceived immorality and dangerousness that interest is piqued. Thus, many law-abiding people routinely fantasize about committing sexual acts that, if actually committed, would be criminal. Common examples of such fantasies include bondage and domination. Less common fantasies involving more extreme violence, including cannibalism or torture, are often no more indicative of criminality.

Of course, law enforcement must root out and stop bona fide conspiracies to commit sexual crimes. Violent sexual fantasies, however, are not unique to real criminals. Mr. Valle's online profile, for example, explained that he liked to "press the envelope," but that his discussions online remained "all fantasy." No matter how grotesque a lay juror may find them, in the overwhelming majority of cases, these fantasies are not indicative of criminality. Thus Mr. Valle's prosecution provides an important opportunity to distinguish between sexual fantasies, especially those explored online, and real sexual crimes.



## II. ARGUMENT

Fantasy, no matter how atypical or monstrous, is not criminal. The line between fantasy and reality is an important one, and it is critical to resist the impulse to collapse this line based on the character and nature of a given fantasy. In light of current psychological research on violent sexual fantasies and the realities of the Internet age, lawmakers and judges need to be particularly mindful when policing real-world action, lest they punish people simply for expressing fantasies.

### **A. Fantasies Involving Sexual Violence Are Not Uncommon or Generally Indicative of Criminality**

#### i. Forms of Sexual Fantasy

Violent sexual fantasies serve many different purposes and take many different forms. The Brothers Grimm, for example, used sexual violence to convey moral values. In their fairy tale, “The Robber Bridegroom,” a young woman watches in horror as her betrothed leads several men to drag a young girl to their lair where they rip off her clothes and lay her on a table before hacking her body to pieces and sprinkling them with salt. Maria Tatar, *The Hard Facts of Grimms’ Fairy Tales* (2d ed. 1987).

Hollywood has relied on sexual displays and violence to attract audiences for decades. Once called the source of Hollywood’s “porno-violence,” the 1967 film *Bonnie and Clyde* achieved critical acclaim when it depicted the “gruesome”

and “stomach-turning” criminal exploits of a young couple throughout the central Southwest during the 1930’s. Jeffrey Goldstein, *Why We Watch: The Attractions of Violent Entertainment* 117 (Oxford University Press 1998). There can be little doubt that violent encounters and “sadistic maiming” are on the rise in Hollywood cinema. *Id.* at 180. The popular film *The Silence of the Lambs*, for example, depicts an FBI analyst’s attempt to apprehend a serial killer who kills young women and removes their skin. This perhaps perplexing interest in portrayals of eroticism, violence, and gore has nonetheless attracted a great number of viewers and garnered five Academy Awards, including Best Picture.<sup>2</sup>

Similarly, sexual fantasies involving violence are not uncommon among Americans. These violent sexual fantasies—whether imagined by a female or male—can take many forms. Some involve a male committing violence on a female, including fantasies about binding, domination, torture, and forced sex. The accompanying sexual arousal is *not* confined to those likely to commit crimes. Depending on the sample, one study showed between 13% and 54% of men admitted to sexual fantasies that involved elements of domination. Harold Leitenberg & Kris Henning, *Sexual Fantasy*, 117 PSYCHOLOGICAL BULLETIN 469, 483 (1995). Another study estimated that 39% of men have had fantasies of “tying

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<sup>2</sup> 1992: *The 64th Academy Award Winners*, The Oscars, <http://oscar.go.com/blogs/oscar-history/1992-64th-academy-award-winners> (last visited March 20, 2015).

up” and 30% of “raping a woman.” Claude Crepault & Marcel Couture, *Men’s Erotic Fantasies*, 9 *Archives of Sexual Behavior* 565 (1980). Surveys of presumably noncriminal male college students found that a significant percentage indicated heightened arousal in response to fantasies of “infliction of pain on others,”<sup>3</sup> pictures of women with “distressed faces,”<sup>4</sup> and depictions of “semi-nude women in bondage.”<sup>5</sup>

Indeed, one of the fastest growing unconventional themes in pornography of the past thirty years, at least in the United States, is the cluster of sexual preferences known in the sex industry as “BDSM.”<sup>6</sup> Those that engage in BDSM often derive pleasure from the perceived physical or psychological suffering of his or her partner. This pleasure has been attributed to the loss of control that comes

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<sup>3</sup> Raymond A. Eve & Donald G. Renslow, *An Exploratory Analysis of Private Sexual Behaviors Among College Students*, 8 *Soc. Behavior & Personality* 97 (1980).

<sup>4</sup> Alfred B. Heilbrun Jr. & Maura P. Loftus, *The Role of Sadism & Peer Pressure in the Sexual Aggression of Male College Students*, 22 *J. of Sexual Research* 320 (1986).

<sup>5</sup> Alfred B. Heilbrun Jr. & David T. Seif, *Erotic Value of Female Distress in Sexually Explicit Photographs*, 24 *J. of Sexual Research* 47 (1988).

<sup>6</sup> See Matt Haber, *A Hush-Hush Topic No More*, *THE NEW YORK TIMES*, [http://www.nytimes.com/2013/02/28/fashion/bondage-domination-and-kink-sex-communities-step-into-view.html?\\_r=0](http://www.nytimes.com/2013/02/28/fashion/bondage-domination-and-kink-sex-communities-step-into-view.html?_r=0) (last visited Mar. 5, 2015) (describing the growing popularity of BDSM fetishes). The letter pairings in the BDSM acronym can stand for several words, including bondage/discipline, domination/submission, and sadism/masochism. *Id.* The blockbuster success of E.L. James’s *Fifty Shades of Grey* trilogy exemplifies the growing popularity of BDSM fetishes.

with submission, the rush of power that comes from domination, and the general transgressiveness involved when one pushes social boundaries.

Although far more men have been convicted of sex crimes than women, there is no evidence that women fantasize about sexual violence any less than men. Current research suggests that up to 62% of women have had rape fantasies. *See* Jenny Bivona & Joseph Critelli, *The Nature of Women's Rape Fantasies: An Analysis of Prevalence, Frequency, and Contents*, 46 JOURNAL OF SEX RESEARCH 33 (2009). Crucially, none of these women *actually* wish to be raped; rather, they explore it mentally. For women who have had rape fantasies, the median frequency of these fantasies was about four times per year, with 14% of study participants reporting that they had rape fantasies at least once a week. *Id.* The prevalence of violent erotica in pornography, along with the admitted fantasies and experiences of college students and adults in a given community, gives rise to one inescapable conclusion: for many people, violent sexual fantasies are arousing.

ii. The Vast Majority of Fantasists Do Not Intend to Act

Of course, just as virtually no women desire to be raped, the vast majority of men and women who have violent sexual fantasies never intend to act on them.

Courts have recognized that:

fantasies of performing violent acts are actually quite common in human experience, and are entertained from time to time by even the most gentle of human beings. Rather than being predictive of future violence, such fantasies actually serve as a psychological ‘safety

valve,’ permitting the vicarious, but safe and harmless discharge of strong emotions.

*Pettus v. Cole*, 49 Cal. App. 4th 402, 422 n.14 (quoting psychiatrist Dr. Kathleen Bell Unger). *See also United States v. Hite*, 769 F.3d 1154, 1170 (D.C. Cir. 2014) (holding that expert testimony can shed light on what may be an unfamiliar topic to most jurors: sexual fantasy involving children, particularly the kind that unfolds in the virtual realm of the Internet); *United States v. Joseph*, 542 F.3d 13, 21 (2d Cir. 2008) (urging the district court to “give a more thorough consideration” to the defendant’s request to present expert testimony regarding “a distinct culture of the Internet in which one can become a ‘fantasy character’”); *United States v. Curtin*, 588 F.3d 993, 997–98 (9th Cir. 2009) (permitting expert testimony concerning “the role of fantasies in sexual behavior and . . . that many people fantasize about things they would never do in actuality”).

In amici’s experience, it is common for sexual fantasy to be an end in and of itself; in other words, an individual has no desire to carry out the physical act, but is nonetheless aroused or intrigued by imagining it. One example of this phenomenon are the many viewers attracted to violent movies like *The Silence of the Lambs*. Those that watch a film about a sadistic killer who takes pleasure in murdering and “skinning” young women do not do so to cope with their latent cannibal desires; they seek sensation and excitement. Another example are the women who fantasize about being raped. Psychologically, this is analogous to the

man who fantasizes about forcing sex upon another. The vast majority of such fantasists—male and female—have no intention or interest in acting upon that fantasy.

To be sure, policymakers and judges have a crucial line to draw between policing one's thoughts and legitimate policing of criminal behavior. If the line is drawn too early or based purely on speculation, however, we risk punishing individuals for thoughts that would never turn into crimes. In Dr. Berlin's clinical experience, he has seen many examples of violent sexual fantasies that had no relationship to criminal action. Specifically, he has observed individuals who make representations on the Internet that sound extremely realistic but are, after further investigation, merely fantasy. For example, one patient explained in great detail in an online conversation that he was masturbating in front of a child. When police arrived, there was no such child. A second man chatted online regarding his sexual involvement with a neighbor's son. The specifics of the chat were quite convincing, and indicated that he was punishing the child by inflicting specific sexual acts. But, in reality, that man had no such neighbor, and nobody was involved apart from the chat participants. Thus, the patient's very detailed "punishment" was imagined. A third patient discussed keeping his own son caged and forcing him to submit to sexual acts. Again, nothing in this patient's conversations extended beyond fantasizing and role-playing; the man never had a

son in the first place. These fantasies all include activity that, if carried out, would be criminal. However, when police get to the point of investigating what they see in an online chat room, they often discover the words had no basis in reality. These fantasies are unquestionably disturbing and alarming. The nature of this sort of sexual role-play warrants concern and an investigation into its veracity. But these thoughts by themselves rarely lead to “real world” action.

iii. It is Common to Incorporate Friends and Acquaintances into Fantasies

Additionally, it is quite common to incorporate one’s friends, acquaintances, lovers, and even strangers into one’s sexual fantasies. According to a recent study involving university students, the most common subjects of sexual dreams are friends and acquaintances. David King, Teresa L. DeCicco & Terry P. Humphreys, *Investigating Sexual Dream Imagery in Relation to Sexual Behaviors and Fantasies Among Canadian University Students*, 18 CANADIAN JOURNAL OF HUMAN SEXUALITY 135 (2009). Of students surveyed, 41.6% reported that friends or acquaintances were the subject of their dreams, 26.9% described past or current romantic partners, 24.6% described strangers, 4.6% were alone or observing others, and 2.3% described family members. *Id.* at 141. Aggression was present in 19% of the reported dreams and 8% contained direct references to rape. *Id.* at 141.

Fantasists also engage in extensive research into their “characters” or their imagined “victims” because it enhances the rush or sexual pleasure of the role-

playing activity. This sort of investigation creates a more material experience and heightens the fantasy. For example, many married men fantasize about having affairs with women they know. They might Google a woman's name on their work computer, look up her picture online, or even attend social events where they might run into her, to enhance the fantasy, even though they have no intention to ever actually cheat on their spouses.

iv. Detailed Violent Fantasies Are Not Limited to the Sexual Realm

Detailed fantasizing, without any intent or probability of actually carrying out the act, is hardly limited to the sexual realm. For instance, many video games exist—on the Internet and elsewhere—that put players in the position of a soldier, gangster, or vigilante. The “Grand Theft Auto” series, one of the world's best-selling and most infamous video games, allows players free movement in a city or across a region. The game lets players behave however they wish, meaning one can (and is encouraged to) destroy parked vehicles, steal cars, deal drugs, and kill pedestrians and police officers. Moreover, some of the most successful video games are war simulations featuring the ability to orally converse with teammates and opponents. An observer would note the vulgarity and violence of many players, but it is the rare user—to say the least—who truly intends to carry out any of the threats he makes. See *REAL Death Threats on Call of Duty!*, YOUTUBE.COM, <https://www.youtube.com/watch?v=g9nmG5llmNA> (last visited



Mar. 4, 2015) (depicting the graphic and often violent way online gamers communicate with each other). Likewise, there are online forums for readers of graphic novels and horror stories that depict an infinitude of atypical fantasies described in gory detail. In all of these settings, as in the sexual realm, it is the extreme exception when a person acts on their fantasies.

Importantly, it is uncommon for a fantasist to constantly declare to others that he or she is merely engaging in role-play. Instead, the noncriminal fantasist endeavors to make his or her role-play seem very real. A declaration that it is fantasy would minimize its psychological effect, since much of the value of a fantasy lies in its apparent reality. It is contrary to psychological understandings to imply that a lack of a disclaimer—“this is all a fantasy,” or something of the sort—is indicative of an intent to take real-world action.

**B. By Facilitating Taboo Sexual Fantasies, the Internet Makes Them More Visible but No More Indicative of Criminality, Thereby Exacerbating the “Thought Police” Problem**

Before the advent of online communication, atypical sexual desires were not so easily expressed in public fora. Finding likeminded individuals receptive to such fantasies was difficult without a seemingly anonymous forum like the Internet. The nature of the Internet attracts people whose “sexual tastes deviate from the norm, as well as those who wish to hide their sexual activity.” Michael W. Ross, *Typing, Doing, and Being: Sexuality and the Internet*, 42 JOURNAL OF

SEX RESEARCH 342, 349 (2005). By “using anonymous screen names, individuals can explore and express their interests with little fear that friends, coworkers, or even spouses will discover their activities.” Katelyn Y.A. McKenna, Amie S. Green & Pamela K. Smith, *Demarginalizing the Sexual Self*, 38 JOURNAL OF SEX RESEARCH 302 (2001). One study describes the role of the Internet as follows:

In a sense, the Internet has democratized access to sexually related material. Erotic bookshops and video stores can generally be found only in urban areas, often in the seedier parts of town, and with a limited offering of materials. Little erotic material has traditionally been made available that caters to women, and women have had little opportunity to discover its existence. Now, however, erotic material of all kinds is freely available to anyone with access to the Internet. Individuals can obtain, peruse, and create erotica without leaving the privacy of their own homes. They can actively interact with other people who share their sexual interests without the necessity of the other person being physically present. Not surprisingly, therefore, both men and women take an active role in online erotic activities. A recent poll conducted by MSNBC (June 9, 2000) with 9000 online participants found that 59% of the female participants in the survey were regular visitors to cybersex sites.

*Id.* To the individual engaging in cybersex, there can be a perception that his or her activity is not a “‘real’ behavior because there is not a physical interaction.” Michael W. Ross, *Typing, Doing, and Being: Sexuality and the Internet*, 42 JOURNAL OF SEX RESEARCH 342, 345 (2005).

The Internet complicates attempts to distinguish between real-world conduct and sexual fantasy. Given that accessing an infinitude of virtual sexual experiences is as easy as clicking a mouse, entering this world disinhibits many

users and creates the perception that anything they say is merely a game without real-world consequences. The two main goals in expressing sexual fantasies online are 1) emotional and physical safety and 2) sexual gratification. Katelyn Y.A. McKenna, Amie S. Green & Pamela K. Smith, *Demarginalizing the Sexual Self*, 38 JOURNAL OF SEX RESEARCH 302, 303 (2001). The Internet creates an illusion of anonymity for users, allowing them to express their atypical fantasies and fetishes in what is perceived as an emotionally safe environment. It exposes private thoughts and experiences to the general public in a way that did not exist in the pre-Internet era.

What many users do not realize is that the Internet's "apparent protection from legal oversight may be illusory, given the electronic expertise of many police and other regulatory authorities." Michael W. Ross, *Typing, Doing, and Being: Sexuality and the Internet*, 42 JOURNAL OF SEX RESEARCH 342, 349 (2005). Internet users fantasize aggressively and openly, seemingly protected by the parasol of anonymity. The safety they feel is disinhibiting. But when the police come knocking with probable cause, the parasol turns out to be clear, and the anonymity illusory. When legitimate law enforcement purposes are at issue, it is usually quite easy to put face to username. This reality requires that we assess online fantasies—and the potential criminal liability surrounding them—in context rather than at face value.

The Internet exposes the inner workings of human thought, but should not be relied upon as a predictor for future conduct. The existence of these fantasies can be evidence of what a person finds sexually arousing, but it is not reliable evidence of whether a person will actually commit a violent crime. Understanding this is crucial to ensure that innocent fantasizing is not made criminal. To be sure, this does not mean that law enforcement should refrain from investigating suspicious online activity. However, if the law fails to adequately distinguish between fantasy role-play and real-world criminality, then we run the risk that an individual will be convicted out of fear and disgust rather than for actual criminal conduct.

### **C. Valle's Online Activity Is Most Aptly Characterized as Fantasy**

At trial, the government attempted to differentiate between Mr. Valle's internet conversations that constituted fantasy, and those that constituted "real" plans to kidnap women. It is as unsurprising as it is problematic that a group of laypeople might view Mr. Valle's fantasies as real-world plans. The affirmation offered by Dr. Park Dietz at trial, informed by the psychological realities included in this amici brief, concludes that all of Mr. Valle's conversations were "of the same character"—fantasy.

It would be a miscarriage of justice to allow the prosecution's misleading medical arguments to prevail upon a jury of laypeople. This is no fault of the jury; the underlying psychology is complex, bizarre, and often counterintuitive. To

most Americans, someone with violent sexual fantasies articulated toward specific women, who anonymously discusses those fantasies online and keeps photos of the women on his computer, is dangerous. But common sense errs in this regard; based on the information Dr. Berlin has reviewed, Mr. Valle's fantasies are abnormal in the sense that most people do not share them, but they are not indicative of criminality.

In sum, it was abundantly appropriate to closely examine the jury's guilty verdict to ensure that it was adequately supported by evidence. Given the complex topic of sexual psychology, there is a great risk that the jury convicted based on a misunderstanding of sexual fantasy and its supposed relationship to criminality.

### **III. CONCLUSION**

Much of the media coverage surrounding Gilberto Valle's trial focused on the repulsive content of his emails and chats. However, a criminal conviction based on a misunderstanding of Mr. Valle's online activity risks punishing him for fantasies instead of acts. Abnormal thoughts do not make one a monster, so one cannot take online fantasies at face value. Rather, it is crucial to evaluate information independent from his Internet activity. Mr. Valle appears to be a man with a habitual, obsessive tendency to fantasize—but not a criminal. According to contemporary psychological research, Valle's expressions online do not appear to support an inference that he was anything more than a fantasist.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE  
REQUIREMENTS PURSUANT TO FED. R. APP. P. 32(a)(7)(C)**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify as follows:

1. This Brief of Amici Curiae Frederick S. Berlin, M.D., Ph.D., in Support of Defendant-Appellant Gilberto Valle complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,428 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2011, the word processing system used to prepare the brief, in 14-point Times New Roman font.

Dated: March 20, 2015

By: /s/ Stephen L. Braga  
Stephen L. Braga

*Counsel for Amici Curiae*

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on March 20, 2015, a true and correct copy of the foregoing Brief of Amici Curiae Frederick S. Berlin, M.D., Ph.D., and Chris Kraft, Ph.D., in Support of Defendant-Appellee Gilberto Valle was served on all counsel of record in this appeal via CM/ECF pursuant to Second Circuit Rule 25.1(h)(1)-(2).

Dated: March 20, 2015

By: /s/ Stephen L. Braga  
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