



Research Article

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Are All Sex Criminals the Same? Consumers of Child Pornography Reconsidered

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Abstract

A theoretical and practical distinction is drawn between sex offenders and consumers of child pornography on the bases of their unique and different psychological makeups and motives to offend. Distinct psychological profiles have been revealed in clinical practice and in research between “active” sex offenders (e.g., sexual assault, sexual abuse, molestation, active pedophiles, etc.) and “passive” sex offenders (i.e., those prosecuted for consumption of child pornography). Recommendations are made for legislation changes and development of treatment approaches, based on these differences.

Keywords: Sex Offenders; Child Pornography; Sex Criminals

Introduction

The California Penal Code lists rape, statutory rape, sexual assault of animals, oral copulation by force, pimping, pandering prostitution, child pornography, lewd acts on child or dependent person, sexual battery, indecent exposure, and child sexual molestation as common sex crimes [1,2]. Similar laws exist in other states in the union. Further, U.S. Federal and State laws provide specific language to define child pornography (e.g., possession of, production of, distribution of, etc.) to be included in the definition of sex crimes, and specific penalties for the various violations under those codes. By and large, under current laws, the criminal penalties for a person charged with child pornography consumption are largely dictated by a uniform set of federal and states guidelines, involving some combination of incarceration and probation [3,4].

Additionally, since 2012 and thereafter, diversion and mandated treatment programs during the probationary period

for all sex crimes under these codes are generally geared toward a “containment.” That means, that persons prosecuted for any sex crime from the above list would be considered incorrigible, and like addicts of substances, forever addicts (even if “in sustained remission”). This same ‘permanent’ legal definition is also applied to consumers of child-pornography, who are also considered incorrigible and therefore “forever criminals-in-potential” [5].

Consequent to that, treatments of child pornography offenders seek only to “manage and contain” in order to minimize the “eternal” negative impact on society by offenders’ potential to re-offend at any point in time [6]. Containment typically involves, at the very least, one year of mandated weekly group psychological treatment provided by certified providers; periodic assessments for recidivism risk; periodic polygraph evaluations, and regular contact with a probation officer. As part of the containment process,

persons convicted of all sex crimes are also placed on a publicly accessible online sex-offender list and remain on that list even after their probation period has expired. This of course, unless they prevail upon the court to remove them from that list [7,8]. This legal practice departs sharply from the treatment of other addiction-related offenses such as DUI (Driving Under the Influence of alcohol or other substance), where offenders are not placed on a publicly accessible traffic-offender list and are not deemed incorrigible [5].

The breadth and scope of states and federal laws pertaining to sex crimes leave little room for judges sentencing considerations for differences between types of sex crimes - whether “active” (e.g., sexual assault, rape, child sexual abuse, etc.) or “passive” (e.g., consumption of child pornography). These rules do not necessarily consider who the potential victims may be (i.e., child or adult), and when they rarely do, they then often overlook other extenuating circumstances. The penal codes generally give no consideration for the motivations of the perpetrators, and theoretically at least, do not concern themselves with the gender mix of perpetrator and victim, nor with other demographic elements. Hence, legislative efforts to create sweeping sex crime rules that could reach greater uniformity and coherence, in fact, do just the opposite. This, because the differences between perpetrators and victims, between psychological motivations of the perpetrators, and any other extenuating circumstances create an entire gamut that is not adequately described nor addressed by existing laws [9,10].

The Problem with Possession, Use, and Distribution of Child Pornography

When the laws which defined possession of child pornography were conceived, technological developments in the digital world were in their relative infancy. Hence, in the early 2000's it was necessary for a person who wished to view pornographic material involving children to possess it in some form - either in print, or in some computer file or other digital storage format. With current advances of internet and video services involving streaming, and with the advent of digital libraries which can be accessed from any digital device, the need to possess pornographic material involving children in order to view it has been largely eliminated. Hence, consumers of child pornography, by and large, do not neatly qualify for the narrow legal definition of “possession” of child pornography, merely by looking at child pornography. This, in and of itself creates a series of probative issues for law enforcement for which it becomes increasingly difficult to effectively determine who is actually “consuming” child pornography, and who was only accidentally exposed to it (and therefore not technically guilty of possession in its current legal definition) [9,11].

But the problems with current laws do not end there. Consider the following scenario: An eleven years-old boy tells his parents that at the locker room after gym class, a fellow student showed him a nude picture of a minor girl on his mobile device. The girl, who is a classmate of theirs had shared a picture of her exposed breasts, in an innocent, but ill-advised attempt to seduce the fellow into dating her. Under current law, the parents are required to report their minor son for possession of child pornography, which could result in

his adjudication by state youth authority and in his irrevocable and eternal placement on the “sex-offender” list, among other penalties [11,12]. Additionally, under current law, the boy who showed the picture and the girl who sent the offending image would be both prosecuted under the more severe trafficking of child pornographic materials, and could suffer other serious consequences (e.g., spend years in prison, placed on probation, etc.).

The laws governing child pornography do not adequately address these situations which are unfortunately all too common nowadays [13]. As such, child pornography laws fail to keep up with societal and cultural changes. They thus fail to address the multiplicity of situations, transactional, and interactional permutations that could and do involve the use of child pornography. For instance, CNN reported that when Vanessa Hudgen's (star of the “High School Musical” television show) naked pictures appeared on the internet, she quickly apologized, and nothing became of it. When sixteen years-old Philip Alpert however, “sexted” a nude picture of his sixteen years-old girlfriend, he was placed on the sex offenders list for distributing child pornography [14]. In fact, studies of “sexting” behaviors (sending sexually explicit verbal or photographic messages via smart phones' text and social media platforms) reveal it is a widespread and common behavior among teens [15]. Consequently, current laws governing child pornography would automatically pronounce the majority of teens in the world today as sex offenders, subject to all the correctional measures commonly applied [11].

The Problem with Authenticity of Child Pornography

In our age, dinosaurs which had been extinct for millions of years are magically brought back to life in 3D, featured in highly entertaining and hugely profitable films of the Jurassic Park genre. Hence, at this point in time, no one can be certain that what is viewed on a screen is indeed, real, or whether it is the product of skilful graphic manipulation and digital artistry.

Furthermore, computer graphic software has become ubiquitous and readily available to any consumer, and all sufficiently skilled digital operators can create pornographic images involving children that are indistinguishable from reality. This new digital environment created both evidentiary and probative difficulties as well, even for the most sophisticated investigators, and the savvy of prosecutors. The current state of digital technology development effectively blurs the lines for both consumers and for law enforcement alike, about the authenticity of the materials being created and / or viewed. It is no longer possible to distinguish between viewing actual child pornography (which is punishable under law), and viewing some “artistic” and / or “imaginary” rendition of the same (which may not be punishable by law), and may be protected under the first amendment as “art” [9,11].

These blurred lines gave rise to the development and proliferation of what is considered by some consumers of child pornography a “legitimate” child-pornography animation industry. Animated child-pornography nowadays circumvents all legal restrictions because it falls under the broader definition of “graphic art” protected by freedom of speech and freedom of expression

[8,16]. Not all artistic forms which depict child pornography are necessarily exempt though as a case before a New York City judge involving a rap music video illustrates. The adult rapper produced a music video in which a nude minor (13 years-old) girl was shown to engage in suggestive sexual interaction with the rapper. It was hence treated as the creation and distribution of child pornography, adjudicated as such, and not as a legitimate artistic expression [17]. Because the sentenced artist was a celebrity however, the sentence was much reduced, compared to others in similar circumstances. Unlike the hapless rapper, current studies indicate that users of child pornography who are generally younger and better educated are also presumably better users of the digital medium. Hence, they have become better able to create, store, erase, and hide child pornographic materials to escape detection than users in previous years [8,11].

The Problem when Laws Punish Fantasies

Child pornography laws by and large treat the sexual fantasy of child pornography commonly (but not exclusively) elicited by child pornography imagery, in the same manner as the actual commission of a sexual act involving a minor [8,16]. In this sense, the legislative approach to the scourge of child sexual exploitation mimics the Catholic church ethos that views sinful thoughts and fantasies with the same gravity as it views the actual commission of sinful acts. When considering this matter, an old case the author worked with in clinical practice comes to mind:

A married couple came to the psychotherapy office requesting treatment for what the wife, a devout Catholic considered her husband's "infidelity." She described the problem as her husband having the case of the "wandering eyes." She complained that her husband would leer at other women's breasts, which she considered infidelity. In her efforts to remedy the situation she went as far as obtaining plastic surgery to augment her own breasts, but to no avail - her husband continued to mindlessly look at those of other ladies. In subsequent therapeutic encounters, it became clear that the husband was in fact, in love with his wife and had no more than a passing interest in the breasts of other women. He confessed to having only dim awareness of the direction his eyes are pointed to, whilst in the company of other women. It became clear that the couple needed to restore the trust between them, and ultimately the peace in the household. In subsequent clinical meetings the upset wife learned that her husband's casual interest in other women's breasts only indicates upon his natural, and fairly common male human reflexes [18,19]. When the wife was able to separate his leering behavior from the suspicion that actual infidelity would surely follow, she relaxed her stance and they were able to work out their differences.

The Problem when Correlation Does Not Entail Causality

It is indeed true that the preponderance of evidence about adjudicated child sexual assault offenders is that they often (but not always) also possess child pornography materials in their residences [20]. What is also true, is that only a very small fraction of persons who possess child pornography materials in

their residences also commit heinous sexual crimes upon children [3,8,20]. The problem when investigators and prosecutors have but scant evidence to go by to adjudicate a case, they tend to rely on fallible heuristics. Heuristics are cognitive illusions formulated on the basis of mental short-cuts that often result in faulty reasoning strategies. The faulty assumption in this case is the "conclusion" that sexual assault of children and viewing child pornography have large commonality (based on correlation), when in fact it has no predictive value (because there is no causality involved).

Imagine the following parallel line of reasoning: Since all basketball players are taller than the average person, it follows then that all taller than average persons are basketball players. Now imagine for the sake of the example that basketball playing was outlawed. By the same legal faulty logic, all tall persons would be also outlawed as well. For a complete discussion of heuristics and their erroneous consequences, please see Tversky and Kahneman [21,22].

Imagine on the other hand if the same heuristic principle would be applied to something much closely related - adjudicated violent criminals. Research indicates that many violent criminals enjoy viewing violent imagery and enjoy playing with violent video games in their homes. The same rationale that is nowadays applied to viewers of child pornography could be applied to viewers of violent imagery on video games, television, and movies. It would then follow by the same logic that all the millions of persons who enjoy violent video games, and all those billions who regularly enjoy violent shows on television and movies would be adjudicated as violent criminals, subjected to probationary periods, and to a permanent placement on a list of violent offenders [16]. The reader could easily recognize that such laws that identify potential violent criminals based on the type of violent entertainment they enjoy would be unconscionable. The damage to those prosecuted for crimes they have not yet committed, as if they already did is immeasurable and frankly, unconstitutional [16].

Commonalities and Differences Between Child Pornography Users and Child Molesters

It is a well known and frequently cited fact that there is a common interest in sex with children in both passive users of child pornography and in active child molesters [20]. It is also commonly expressed that most child molesters reported and/or were found to either possess or to have consumed child pornography [23]. Additionally, there is a general agreement between child pornography users and child sex abusers about the supposed "legitimacy" of sexual interest that adult males will have with younger children [24].

Both groups tend to express deviant sexual interests in general, both groups score higher on measures of pedophile sexual orientation and other paraphilic disorders [25,26], and both groups tend to exhibit deficits in interpersonal and affective domains [5,27].

Furthermore, both male consumers of child pornography and male child abusers tend to share negative attitudes toward women; they tend to have difficulty with sexual self-regulation,

and they tend to possess relatively limited personal resources [26]. Both groups show about equal socio-affective deficits in their intimate relationships with romantic partners, and about equal subjective experience of loneliness across the board. All subtypes of child sexual abusers share difficulties emanating from problems with sexual maturity but differ in how those manifests in their sexual differences [10]. Finally, both groups tend to exhibit about equal changes in the strength of predictive factors to offend after detection, presumably as a result of the inhibiting power of being publicly shamed, and as the result of the opportunity to receive treatment [26].

A commonality that seems to exist in the groups of sex offenders and child pornography consumers alike involve their emotional states. Both groups tend to exhibit increased levels of depression after conviction, presumably because the punishing consequences of their detection and subsequent adjudication (i.e., jail-time, probation, placed on sex-offenders list, etc.). Both groups of sex offenders and child pornography consumers tend to exhibit greater anxiety and paranoia before being detected, with consumers of child pornography scoring higher than those undetected child abusers [5,28].

Consumption of child pornography alone however produced very low and statistically insignificant measures of subsequent actual ("hands-on") perpetration of sex offenses on children. In a large European study [29], of 231 men charged with consumption of illegal pornographic materials involving children, only 11 subjects (4.8%) had prior conviction of a sexual and/or violent offense, and of those, only 2 subjects (1%) for actual child sexual abuse or assault. Of those consumers of child pornography studied, 7 subjects (3%) were found to have continued on to perpetrate a violent and/or sex offense in the subsequent measure at a 6 years follow-up. The researchers concluded that consumption of child pornography alone is not a predictor for future commission of sex offenses, unless the person has committed actual ("hands-on") sex offenses in the past [29].

Others studies [27], found that child pornography consumers are generally high functioning individuals engaged mostly in pro-social activities, and they tend to have less extensive and diverse offending histories compared to actual child abusers. Other factors involving a history of childhood sexual victimization favored sexual child abuse perpetrators in statistically significant numbers compared to consumers of child pornography. That is, actual perpetrators of sexual crimes against children were found more frequently to have been victimized as children than did persons whose crimes involved watching child pornography [26]. There were other variables involving self-regulation which significantly varied among perpetrators of child abuse form rapists and mixed rapists and child abusers combined [30], which warrant care with definitions of sexual crimes as well.

Comparisons among child pornography consumers and child abusers in research also produced interesting results when introducing the variable of detection. Those who were detected by law authorities and therefore adjudicated for their crimes, and

those who were not detected produced different behavioral and psychological presentations [26]. Other distinctions in related studies involved the composition of samples that were used in the different instances, with particular emphasis on those participants who were self-referred to those who were selected based on their prior convictions [28]. Both variables introduced predictable effects on the results and highlighted the complexity of the behavioral phenomena being studied. That is to say, those detected and convicted and those who were not do not necessarily share the same characteristics, and therefore the generalizations applied by the legal system to these disparate groups are largely inappropriate and mostly woefully misguided.

Women Sex Offenders - An Overlooked Category

A group for which there is only sparse research and yet is a relatively growing phenomena are women perpetrators of child sexual abuse and women consumers of child pornography.

Except for highly publicized media reports of female teachers who engaged in sexual relations with their students [31-33], very little has been studied about female sex offenders. In fact, and perhaps surprising to most, more women than men perpetrated acts of child abuse in the U.S. in the years 2020 and 2021 [34-36]. It is possible that this phenomena has not been increasing, rather it had been present for some time but only garnered increased attention in the more recent past.

Because very little professional, legislative, and research attention has been given over the years to women perpetrators of child abuse, much less has come to be known about this group. For example, is there a similar high correspondence between female sex offenders with female child pornography users as seems to exist for males? Some researchers believe that it is possible that the stereotypical perception of women as passive, innocent, and sexually submissive, and their commonplace portrayal as nurturing protectors of children may have helped conceal the real magnitude of the problem [37]. Others yet believe that immediate access to children that most women have provides them more readily available opportunities to molest children than men traditionally have. In fact, a 2005 study showed that 40% of all instances of child abuse were perpetrated by mothers of the victims acting alone and without a male counterpart [38]. The availability theory is supported by studies which found a high prevalence (13 % on the average) of persons working with children (such as teachers, priests, sports coaches, youth organization leaders, etc.) have been adjudicated for having sexually abused children [39,40].

The controversy over the more prevalent adjudication of child pornography usage by males compared to adjudication of female sexual child abusers is far from being resolved. The scientific and legal question about the use of child pornography by women and its relation to actual sexual offenses against children is even less clear. There are only a few news media suggesting that women had also been involved in the creation of child pornography [41], but not much in the way of information on the prevalence of child pornography use by women.

The Clinical Picture of the Typical Consumer of Child Pornography

The most common consumer of child pornography is usually male, although not exclusively, as the author had seen in clinical practice quite a few females with similar interests. Another distinguishing demographic is the age of consumers of child pornography only, which tends to be significantly younger than that of child sexual abusers [28]. What seems to account for this difference is possibly that many consumers of child pornography manage to find a more socially appropriate outlet in the form of an adult romantic and/or sexual relationship as they mature in years.

Typically, as children, these clients experienced serious and ongoing disruption to the relationship with the primary parent (usually mother, but not exclusively), or with both parenting figures early in their development. The disruption was mostly in the form of a loss, or significant reduction in the intimate presence of a loving parent (or parents) in their lives. Additionally, most these children would have made furtive, albeit childish efforts to reclaim the lost intimacy with primary parenting figures in their lives. For the most part, these attempts would have been met with rejection, and / or with limited success, resulting in a general sense of frustration, despondency, and futility.

What typically followed in the trajectory of the growing child would be attempts to obtain the love and affection sorely missing from parents, divested onto other children in their midst.

These efforts would be met with limited success, primarily because the other children are not sufficiently developed and / or capable of providing the emotional needs of their fellow minors. These childish efforts nevertheless bare some psychological fruits, leaving "a taste for more," and laying the foundation for the infantile desire to emotionally "merge" with other children. As the child grows older, the "imprinting" experience of limited success of emotional bonding with other children (compared to the utter and miserable failure with parenting figures), forms the foundational desire for future such intimate connections [18,19]. These "innocent" desires to merge emotionally with other children take on a sexual overtone during and after puberty, when sexual feelings become entwined with emotional needs.

The typical clinical picture measured on personality inventories reveals consumers of child pornography as largely emotionally inhibited, fearful, anxious, and persons who tend to feel overly responsible. On measures of intelligence they often score below their true intelligent capacity because the creative aspects of their problem-solving capacities are frequently sorely inhibited. On measures of aggressiveness they usually score very low, and they generally tend to be socially awkward and painfully shy. For the majority of them, on measures of moral development they appear to have an integrated moral system and they seem to be paradoxically overly conscientious. Thus, they feel frequently ashamed of their interests in child pornography and feel exceptionally guilty for engaging in sexual fantasies involving children. Oftentimes, commensurate with these traits is a development of increased reliance on alcohol and other socially sanctioned substances, to

help mediate the treacherous and frightening waters of social and romantic interactions. Consequently, they find themselves more often than not in treatment for substance abuse before they ever become "discovered" for their other, sex offenses [20,30].

The Typical Clinical Picture of the Child Sexual Abuser

The most commonly adjudicated child abusers and pedophiles historically used to be almost exclusively males, with an increasing number of female representation among offenders in more recent times. A demographic characteristic which sets child sexual abusers from their non-abusers counterparts is that they tend to be significantly older in age, and usually unemployed. The age difference may be explained by the relative stability over time of their other personality traits such as antisocial elements, and attitudes condoning their criminal acts. The unemployment status difference may be better explained by their increased interaction with law-enforcement authorities, resulting in increased difficulty in gaining employment after being placed on the sex offender list [28,42].

A significantly sizeable number of "active" sexual child abusers have been themselves victimized by sex offenses during their childhoods, but not exclusively. Many others experienced other types of demeaning, personally diminishing, and otherwise disempowering treatment at the hands of parents and caretakers, resulting in serious psychological insults. Often they were exposed to physical abuse, emotional abuse, and to demeaning messages by others in authority over them while growing up. The sense of deep hurt resulted, over time, in the desire to reclaim the power, take the initiative, and "master" the trauma of their childhood by recapitulating the dysfunctional interaction - only this time with them at the controls. For the majority of perpetrators of sexual crimes against children and adults there is a convergence of sexual excitation with aggressive impulses and the discharge of violence. Often times, the commission of sexual assault is accompanied by and / or facilitated by the use of substances or alcohol consumption [20,28,42]. At other times the violent crime is facilitated by the availability of potential minor victims and the opportunities to offend [39].

Many members of this group present as adults with the characteristic "chip-on-the-shoulder" mentality that "justifies" the punishment they wish to inflict upon others on the suffering they experienced in their own past [26]. Frequently, they tend to rationalize their heinous crimes by blaming the victims who "seduced or enticed" them, and in other instances by rationalizing that they were doing something good for the victim. Frequently for perpetrators of sexual crimes there is a sense of entitlement to act in aggressive ways because of the wrongs that were done onto them, and because of the impositions and demands of others upon them in the present. Irritable, highly demanding of others, self-indulgent, selfish, stingy, and general grumpiness are prevalent complaints leveled against them by others interacting with them [5,30]. Some believe that perpetrators of sexual abuse of children may seek opportunities to molest by developing careers which

would place them in direct and continued contact with children, thereby increasing opportunities to offend [39,40].

On psychological measures of intelligence, in an otherwise normal intelligent quotient their lowest scores are typically on subscales which measure mental inhibition. On personality inventories their salient characters involve mixed paranoid traits, passive-aggressive, poor impulse-control, antisocial, and narcissistic elements. On measures of emotional traits they tend to score as stringent givers and as hungry and demanding in their emotional needs of others. In measures that track moral development they often score with significant deficits of moral integrity, with salient tendencies to manipulate others for their own needs. On measures of temperament types, they often score high on aggressiveness and interpersonal charm with commensurate very low measures of shyness and personal reserve. They generally speak of themselves in terms such as: Successful, active, outgoing, bright, and self-directed, and would have a very positive outward opinion of themselves. They often score very low on measures of self-awareness, and they express no interest in self-exploration and other activities involving self-reflection. Consequently, they are frequently very poor candidates for corrective psychotherapeutic interventions [5,20,28,42,43].

Discussion

Critics of child pornography laws are numerous and they tend to agree on a few broadly defined premises. One of them, is that when the activity of viewing child pornography images for the purpose of eliciting a sexual response is equated with actual sexually offending against children, the law is overly inclusive, illegitimate, and discriminatory [16].

Additionally, the consequences of prevailing child pornography laws are that pedophiles by and large, are not entitled to any right to sexual gratification based on the presumption that all pedophiles either have, or inevitably will, assault children [3,16].

Evidence from psychological, sociological, and legal research indicates that viewing child pornography and sexually assaulting children are not synonymous, and are governed by distinctly different personal, social, psychological, and circumstantial realities [8,9]. Hence, the adjudication of one behavioral phenomena as if it is another behavioral phenomena flies in the face of scientific knowledge and belies intellectual honesty [20]. Furthermore, penalties and corrective measures equally applied across the board to groups that show disparate recidivism rates (such as incest offenders, extra-familial child molesters targeting same sex and / or other sex victims, non-contact sexual offenders, etc.) fly in the face of a very complex evidentiary and scientific picture [3,5].

The fact that the majority of child sexual offenses in the U.S. are currently perpetrated by women [34], and the dearth of information about the connection between use of child pornography and commission of sexual crimes against children by women is in and of itself reason to question this premise. If the majority of offenses are committed by women, and if there is no consistent correlation to use of child pornography for this group, let alone a causal relationship, then the legal theory is baseless on its face.

Remedies

Among the various remedies introduced for consideration are the potential for sanctioned and legalized virtual child pornography as an outlet and as a replacement for child sexual abuse [44]. The idea behind this proposal is to shift the focus of attention from the criminal behavior to the underlying psychiatric problems that give rise to both consumption of child pornography and child sexual abuse. If consumers and offenders alike are encouraged to come forward and obtain treatment that could provide relief to otherwise prohibited sexual fantasies and desires, the rates of criminal acting-out and the rates of recidivism would drop dramatically [44]. Similar suggestions are floated in legal circles, which propose exempting fantasy pornography and virtual pornography from current criminal definitions and process, particularly when the creation and access to such pornographic content does not cause harm to children [3,16].

Another notion deserving attention is in the focus of treatment for those detected and adjudicated for use of child pornography. The current "containment model" wrongly assumes that treatment should focus on the prevention of transition from child pornography use to sexual assault and sexual abuse of children. It also heavily relies on a model according to which, pedophilia is an addiction, and pedophiles do not deserve to find any legitimate expression to their sexual desires. A better treatment alternative should offer therapies and pharmacological interventions that focus on rehabilitative measures that allow some expression of sexual desires, while at the same time foster protective factors (e.g., gainful employment, intimate relationships with adults, etc.). The legal system should promote "main-streaming" of persons with desires to use child pornography by allowing the creation of virtual scenes (that do not involve actual minors), the use of such, and the continuation of normal life without placement on sex offenders lists [16,42,45].

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Conflict of Interest

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