



Copyright © 2017 International Journal of Cyber Criminology – ISSN: 0973-5089
July – December 2017. Vol. 11(2): 202–217. DOI: 10.5281/zenodo.1037391
Publisher & Editor-in-Chief – K. Jaishankar / Open Access (Authors / Readers No Pay Journal).

This is a Diamond Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.



SPECIAL ISSUE ON SEXTING

Sexting and Privacy Violations: A Case Study of Sympathy and Blame

Amy Adele Hasinoff¹

University of Colorado Denver, United States of America

Abstract

Teens who consensually create and share sexual images of themselves are criticized in the media and criminalized in US law, but there is less specific attention to those who distribute such images without permission. This article focuses on one such case, in which an 18-year-old distributed explicit photos of his ex-girlfriend to her family, friends, and teachers. This paper offers an in-depth qualitative discourse analysis of the case, examining the two sides of the response to the perpetrator: the legal system viewed his actions as severely harmful and considered him a sexual predator, while most of the media coverage supported the young man by blaming the victim. This case demonstrates the need for more nuanced responses to sexual privacy violations that do not blame victims but instead hold perpetrators accountable without demonizing and stigmatizing them as registered sex offenders.

Keywords: Sexting, Privacy, Gender, Sex Offenders, Blame.

Introduction

Shortly after Adam Allen² turned 18, he got into an argument with his ex-girlfriend. In a moment of anger, he distributed explicit photos the girl had shared with him when they were dating to her family, friends, and teachers. Allen was arrested and on the advice of his misinformed lawyer, he pled guilty to transmitting child pornography, not realizing that this conviction would require him to register as a sex offender (Calvert, 2009). The legal system viewed Allen's actions as severely harmful and considered him a sexual predator. However, Allen received considerable compassion from the press and many talk show hosts and journalists blamed the victim and used this story to discourage teen girls from creating and sharing sexual images of themselves in the first place. This paper examines these two sides of the response to Allen—the legal view that he is a sexual

¹ Assistant Professor, Department of Communication, University of Colorado Denver, Denver, CO 80217-3364, USA. Email: amy.hasinoff@ucdenver.edu URL: www.amyhasinoff.com

²Though the case received considerable national media attention, I use a pseudonym to try to prevent this article from appearing in online searches for the real name of this person. As I discuss later in the article, many experts argue that the publication of personal information on sex offender registries is ineffective and potentially unconstitutional.



predator and the defensive media coverage blaming the victim. This illustrates the need for different ways of thinking and talking about privacy violations that holds perpetrators responsible and accountable without demonizing them as predators or condemning consensual sexting.

Sexting, the practice of sharing of personal sexual images via mobile phone or any digital communication, is commonplace: one-third of 16- and 17-year-olds and around half of young adults report that they sext (Klettke, et al., 2014). Sexting is often unproblematic if it is completely consensual.³ Yet, the practice can qualify as child pornography in the US because of state and federal laws prohibiting the creation, possession, and distribution of an explicit photo of someone who is under 18 years old⁴—even if that photo is of oneself. These laws make no legal distinction between sharing an image willingly with a romantic partner and maliciously distributing a private sexual image to a third party.

As recent studies have shown, girls who are victims of privacy violations often face sexist victim-blaming and slut-shaming (Albury & Crawford, 2012; Hasinoff & Shepherd, 2014; Ringrose, et al., 2012; Tallon, et al., 2012). To help address these issues, some researchers argue that consensual sexting should be decriminalized, and the focus should instead be on decreasing the incidence of privacy violations (Albury & Crawford, 2012; Hasinoff, 2015; Karaian, 2012; Newton-Brown, et al., 2013). Yet, existing laws and social frameworks misunderstand this harm and continue to criminalize consensual teen sexting and to blame victims (Citron & Franks, 2014; Henry & Powell, 2015, 2016).

Studies of media discourses about sexting often focus on representations of girls as consensual sexters and victims of privacy violations. The existing research investigates public service announcements, educational campaigns, and news media that tend to depict sexting as risky and deviant and finds that girls who sext are often viewed as both lacking agency and as blame-worthy (Draper, 2012; Goldstein, 2009; Hasinoff, 2015; Karaian, 2012). Building on this work, I focus on the media representations of someone who committed a privacy violation to examine common ideas and assumptions about the perpetrator of this kind of harm and the appropriate responses to it.

This study is an in-depth qualitative discourse analysis (Saukko, 2003) of US media coverage of the Allen case. Allen's case is significant because it was one of the first to garner national attention in the initial media frenzy about sexting in 2009 (Podlas, 2011). As such, this case helped frame sexting as a child pornography issue (Podlas, 2011), and this problematic interpretation in both the legal system and national media continues to this day. The media coverage about Allen began when journalist Bianca Prieto wrote about him in March 2009 in the *Orlando Sentinel*.⁵ This article alerted Florida lawyer Larry

³ In one study, 92% of teens who sexted consensually and without coercion reported that it caused no problems with parents, peers, or at school; however, 32% of those who were coerced to produce an image reported that it caused problems (Englander, 2012).

⁴ Nebraska and New Mexico are exceptions in which the possession of images is decriminalized for teens, but the production and distribution of sexual images, even of oneself, is still currently illegal for minors in all states.

⁵ In the course of her research for a story on sexting, Prieto contacted the United States attorney's office to find out if there had been any local cases involving youth convicted for child pornography and was directed to Allen; she located Allen by finding his address listed on the sex offender registry (personal communication, September 23, 2010).

Walters to the case, and his work led to national media coverage,⁶ including newspaper articles, television news, and talk show segments on CBS, ABC, FOX, CNN, *The Rachel Ray Show*, and *The Today Show*.⁷ I examine statements by and about Allen in these national media outlets, the initial story in the *Orlando Sentinel*, and an in-depth interview of Allen and Walters published in a law journal.⁸

The media resistance to Allen's child pornography conviction in this case is consistent with existing research, both on public opinion about child pornography convictions and media coverage of sexting. Podlas (2011) found in a study of news articles about sexting prosecutions from 2008–2009 that 78% of stories were negative towards the prosecution and/or sympathetic to the teen. Survey research likewise indicates that the majority, though not all, adults oppose using child pornography laws against sexting teens. In one survey, 63% of people thought that teens and young adults who shared a private sexual image with a third party should not be on sex offender registries (Comartin, et al., 2013).⁹

In the analysis that follows, I first examine how sex offenders are viewed as intrinsically monstrous rather than as people who have committed acts of harm. In the next section, I demonstrate how Allen and his supporters distinguish him from this imagined figure of the predator in order to gain sympathy for him. Then I examine how discourses about the Allen case pathologize consensual sexting by blaming his victim. I argue that this case demonstrates fundamental failures in the understanding of and response to sexual privacy violations in the US—while registering perpetrators as sex offenders is usually too harsh, blaming the victims is always unfair and inappropriate. I conclude that in order to better protect sexters from privacy violations, we need to both affirm that consensual sexters should not be blamed or criminalized while holding perpetrators accountable without demonizing or stigmatizing them. Finally, I discuss Allen's public apologies to his victim as one example of a discourse that might achieve this balance.

The Construction of the Sexual Predator as Inherently Deviant

As a result of his conviction, Allen is required to register as a sex offender, and much of the media response to his case centers on this outcome. A legal journal article about the Allen case points out: “The stigma attached to being labeled a child pornographer is lasting. Few crimes carry such a pejorative marker, and members of the public often link child pornography with pedophilia and other heinous crimes” (Richards & Calvert, 2009, p. 36). As such, it is important to first understand the construction of sex offender in public discourse as pathological, monstrous, and predatory and the problems associated with this perspective (Filler, 2001; Lynch, 2002; Simon, 1998). Sex offenders are often

⁶Walters states that his office did not pursue any media attention about the Allen case (personal communication, September 23, 2010).

⁷To find news stories about his case, I searched for his name in NewsBank, Google, Lexis-Nexis, and on the websites of major network television channels.

⁸ While this interview was not published in a mass media outlet, it provides useful information about Allen and Walters' underlying assumptions in their interactions with national media.

⁹ Around 80% of people believe teens and young adults who merely received a sexual image sent consensually from a 15- or 16-year-old should not be required to register as a sex offender (Campregher & Jeglic, 2016; Comartin, et al., 2013). While the majority of news and public opinion seems to be against viewing sexting as felony child pornography, many states have ensured the criminalization of all teen sexting regardless of consent by passing new misdemeanor laws that carry lesser penalties (Hasinoff, 2015; Hinduja & Patchin, 2015).



viewed as uniquely dangerous and inhuman figures in news, legislative debates, and other forms of public discourse. This view of sex offenders dates to the early-to-mid-19th century when, Foucault (2003) argues, the Western legal concept of a criminal shifted from a person who had committed a crime to someone with innately criminal dispositions or desires.

This idea that only deviant psychopaths perpetrate sexual violence is evident in a range of US laws and policies implemented in the 20th century. Beginning in the 1930s, many US states passed new “sexual psychopath” laws, which imposed mandatory treatment to cure the personality disorder that was thought to cause deviant sexual acts. From the late 1930s to mid 1960s, sexual psychopath laws also presumed that homosexual behavior indicated that a person was necessarily aberrant, inferior, and dangerously psychopathic (Freedman, 1987; Pratt, 1998). A homosexual act was seen as a behavior that signaled the potential of many other deviant criminal acts, sexual or otherwise.

The idea that particular pathological personality types explain the incidence of sexual violence persists. Fischel notes that after the US mid-century construction of the homosexual as the key figure of sexual deviance waned, the sex offender emerged in the early 1990s as the new figure of sexual danger, which “comfortingly, and wrongly, relocates the danger of sexual harm onto a discrete body (the stranger, the pathological recidivist)” (2010, p. 281). Unlike nearly all the gay men targeted by the mid-century panic, many convicted sex offenders on registries today have indeed harmed other people. Yet, Fischel’s connection between the two illustrates the inadequacy of this persistent model of deviance that relies on the assumption that violence is caused by a person’s essential criminal predisposition, identity, or personality. For decades, feminist theorists have argued that sexual violence cannot be reduced to a few bad people who simply need to be identified and removed from the population. Instead, they maintain that sexual violence is endemic; it pervades institutions and is rooted in dominant social norms of masculinity and sexuality (e.g., Brownmiller, 1975).

Sex offender registries are the contemporary manifestation of this assumption that a sexual offense reveals an individual’s inherent underlying pathology. Once a person has been identified as a sex offender, the stigma can be permanent. All US states require people convicted of certain sex crimes¹⁰ to be listed on public online sex offender registries. These registries are the result of a series of state and federal policy initiatives that began in 1990.¹¹ By permanently stigmatizing registrants, sex offender registries reproduce the idea that a single sexual offense uncovers a person’s intrinsic and irredeemable predatory nature—some states require lifetime registration. Registrants’ home addresses and workplaces are publicly listed online, and registrants usually need to check in with law enforcement annually or quarterly, though homeless registrants must report every 7 days in some states, and failing to report may be a felony. Restrictions in around half of US states prohibit registrants from living within 500 feet—or up to 2000 feet—of a school or park, causing high rates of homelessness among offenders. The stigma of registered sex offenders is so great that some communities add small parks to their neighborhoods to prevent registrants from legally living in the area (Tyson, 2014).

¹⁰Some states’ registries currently include only sex crimes against children.

¹¹ Beginning with the state of Washington in 1990, many states adopted laws authorizing community notification of registered sex offenders. The 2006 US federal Adam Walsh Act is the most recent piece of legislation on sex offender registration and community notification.

Critics of sex offender registration such as the Justice Policy Institute and Human Rights Watch argue that sex offender registries are unconstitutional (Petteruti & Walsh, 2008; Tofte, 2007), and indeed some state supreme courts have struck down parts of these laws (Laird, 2015). Because they impede offenders' rehabilitation and draw attention away from non-stranger cases, registries may actually worsen the social problem of endemic gendered and sexual violence and ultimately reduce community safety (Corrigan, 2006; Petteruti & Walsh, 2008; Spade, 2012; Tofte, 2007). When policies reflect the assumption that all sex offenders are innately and irredeemably deviant and monstrous, it becomes more difficult to acknowledge and address the most common form of harm, which occurs between people who have a pre-existing, sometimes even intimate, relationship.¹² Sex offender registries rely on and promote the idea that pathological strangers—not stepfathers, boyfriends, or trusted authority figures—are responsible for sexual harm (Corrigan, 2006; Fischel, 2010; Meiners, et al., 2011; Spade, 2012). Below, I examine how the discourses about the Allen case reinforce these problematic ideas about sexual predators by insisting that the registry is a valid tool but that Allen simply does not belong on it.

Media Defenses of Allen from the 'Sexual Predator' Label

Because sexual predators are so vilified, the news stories that are sympathetic to Allen must explicitly distinguish him from the typical sexual predator who is imagined to belong on a registry. These discourses maintain and reinforce ideas about sexual offenders, particularly the idea that their motivations are rooted in a pathological desire that is an essential part of their character. The analysis that follows examines three ways the media discourses defend Allen from the "predator" label: (1) by positioning his crime as a mistake and a foolish teenage desire for revenge rather than a deviant predatory act; (2) by blaming his ex-girlfriend for sending the photos to him initially, and (3) by viewing sexting as generally wrong for everyone involved. My point is not that Allen truly is a predator who should be pathologized for his actions. Instead, I argue that the problem lies with the limitations in how popular discourses understand sexual harm as one of two extremes – by pathologizing the offender or minimizing the offense.

Allen's mistake

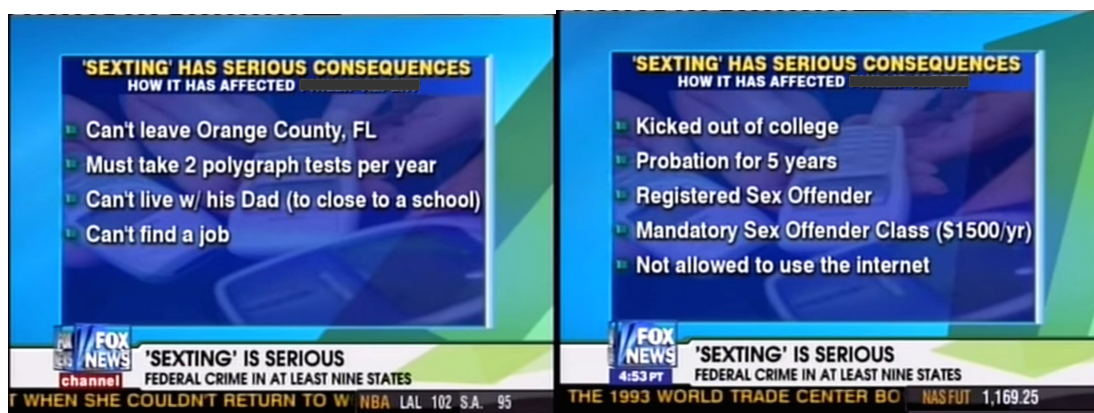
As described above, sexual predators are viewed as compulsive, calculated, and inherently deviant. Resisting this characterization, Allen repeatedly stresses that his crime was a single mistake and error in judgment, which helps to establish that it does not reveal an underlying pathology. For example, Allen says on *Good Morning America*: "I was the stupid kid that sent the pictures across e-mail ... I was very upset. I wasn't thinking" (Kazdin & Ibanga, 2009). On CNN, he explains: "It was a stupid thing I did because I was upset and tired and it was the middle of the night and I was an immature kid" (Feyerick & Steffen, 2009). He explains that having just turned 18 one month before the incident, the criminal penalties were more severe, "As if that one month gave me all this extra knowledge and maturity, which obviously it didn't or I wouldn't have done this" (Richards & Calvert, 2009, p. 19). In order to distance himself from the image of the predator, Allen stresses that his actions were not purposeful but resulted from teenage

¹² This is also true in cases where people are threatened with the exposure of a sexual image; most have had a romantic or sexual relationship with the perpetrator (Wolak & Finkelhor, 2016).

“immaturity” and “stupidity” and a lack of “thinking”—in contrast to a predator who, in the popular imagination, meticulously and relentlessly stalks his vulnerable, underage prey.

Much of the media coverage defended Allen against the “sexual predator” label by framing Allen’s case as a story of the over-zealous prosecution of an unfortunate mistake. For example, according to *Good Morning America*, Allen “was branded as a sex offender and kicked out of college” (Kazdin & Ibanga, 2009). This description invokes the image of “branding” to describe Allen’s legal designation as a registered sex offender, portraying that labeling as an act of violence that was done to Allen rather than a term that accurately describes who he is. Stories about the Allen case cast him as an innocent victim of the legal system who had no idea that his mistake would be punished so severely. *Good Morning America*’s feature on sexting introduces Allen by saying he “paid a legal price” for forwarding photos of his ex-girlfriend, and the online article derived from the show, under the subheading “The Legal Downside to Sexting,” notes that he “discovered just how real the consequences of sexting could be” (Kazdin & Ibanga, 2009). One article explains, “Since his arrest and conviction, [Allen’s] life has been difficult” (Prieto, 2009), and the FOX News story even lists the consequences he has suffered on the screen in bullet points (Figure 1). This focus on the consequences establishes that journalists believe that the Allen case is not newsworthy because of the crime he committed, but because they view his punishment as unique and unfair.

Figure 1. FOX News bullet points about the “serious consequences” of sexting
(Note that all of these consequences are legal punishments Allen faces, not the effects on his ex-girlfriend)



By arguing that sex offender registration is too harsh to address Allen’s offense, media seem to reaffirm that registries are valid and important tools of public safety, but that those goals are simply not served by registering Allen. For example, Allen’s attorney Larry Walters argues that while the sex offender registry is useful and important, its impact is unfortunately “diluted” by adding people like Allen:

If sexting teens are required to register, the sex offender registry may lose its impact by diluting its importance. ... A caring mother of a 5-year-old girl wants to know when a pedophile has moved into the neighborhood; she probably doesn’t care at all whether the 16-year-old girl down the street is sending nude photos of herself to her 16-year-old boyfriend. (Richards & Calvert, 2009, p. 36)

The *Orlando Sentinel* article also explains that in the mandatory class Allen must attend for sex offenders, which costs over a thousand dollars per year, “He is joined by people who have raped and molested children. He’s not like them, [Allen] said, but the law says he is” (Prieto, 2009). In an interview published in a legal journal, Allen also comments that in the class, “I am told every time I go there that I belong there. ... They start to make you think that you’re a horrible person, and you’ve done something so deviant that you’re lucky you’re not in jail for the rest of your life” (Richards & Calvert, 2009, p. 27). Allen and the journalists who cover his case seem certain that he is not a “horrible, deviant person,” but in asserting this, they may reinforce the notion that all the other people who attend these classes are.

Viewing Allen’s conduct as a mistake—rather than as evidence that he is a sexual predator—could indeed be part of a more productive way to think about sexual violence that avoids pathologizing the offender. However, news media offered an individualistic story that framed the offender as a victim of harsh and unreasonable laws and minimized his responsibility for causing harm. The Allen case was a missed opportunity for journalists to raise larger questions about the sex offender registry and the appropriate responses to sexual privacy violations. For example, journalists could have made connections to stories in other states about sex offender registries that include offenders who have committed only minor or nonviolent crimes such as indecent exposure, public urination, or sex work (Tofte, 2007). Instead, they offered a narrative about one young man’s unfair prosecution.

Blaming the victim

Another way that journalists and talk show hosts distinguish Allen from a sexual predator is by blaming his victim and defining her as partially responsible. In discussions about the Allen case, media coverage blames the girl¹³ for sending the images to Allen in the first place. This helps to position Allen as a foolish teen involved in a mutual conflict with a peer rather than a dangerous predator. Collectively, these arguments challenge the registry’s assertion that his violation is evidence of his essential nature as a sexual predator. But the problematic implication of this strategy is that it holds his victim responsible by asserting that consensual sexting is deviant and wrong.

Some stories hold Allen’s ex-girlfriend partially responsible by framing the incident as part of an argument and blaming her for initially sending photos to Allen. The *Orlando Sentinel* story depicts Allen’s act of privacy violation as an element of a mutual lovers’ spat: “After his former girlfriend taunted him, [Allen] remembered the nude photos she e-mailed to him while they were dating. He took revenge with an electronic blast” (Prieto, 2009). Stressing that she sent the photos in the first place and that she provoked his actions by “taunting” him, this article frames Allen’s actions as part of a shared dispute in which both parties made bad decisions. The article further elaborates on the girl’s involvement in the incident, highlighting that she was initially an active participant in creating and sending the photos:

[Allen] never asked for the photos that got him in trouble in 2007 ... the girl took nude photos and videos of herself and sent them to his e-mail ... Although Allen

¹³ Allen’s ex-girlfriend is un-named and never quoted in the media coverage of the case to protect her privacy, but this also functions to silence her.



was charged with transmission of child pornography, the girl was never in any legal trouble.(Prieto, 2009)

By noting that Allen did not ask for the photos, and that the girl was not charged as well, the article implies that she shares the blame for her own harassment. FOX News host Alisyn Camerota goes further, asking explicitly, “Why does [the ex-girlfriend] go scot-free? Why is that not child porn, yet he ends up becoming a registered sex offender? There seems to be a double standard” (“Fair,” 2009). Indeed, many other teens have been harshly disciplined for consensually creating and sharing images of themselves that qualify as child pornography (Hasinoff, 2015). This blurs the difference between a consensual sex act and an act of harm. Allen’s ex-girlfriend sent images to a trusted partner who wanted to receive them while Allen chose to betray that trust and violated her privacy in order to seek revenge in a moment of anger.

While Allen himself never blames his ex-girlfriend for her involvement, he still draws on her agency to argue that his crime is less serious. In one comment, Allen implies he should not be on the sex offender registry because his victim had significantly more maturity than a young child. He explains on CNN:

You will find me on the registered sex offender list next to people who have raped children, molested kids, things like that, because I sent child pornography. ... You think child pornography, you think 6-year-old, 3-year-old little kids who can’t think for themselves, who are taken advantage of. That really wasn’t the case. (Feyerick & Steffen, 2009)

With these comments, the age of the victim and her apparent agency is crucial in minimizing the harm and shifting some of the blame to her. Allen is correct that child pornography laws were designed to address a predatory adult exploiting a young child; these laws were passed in the 70s and 80s before digital cameras and mobile phones made it commonplace for minors to produce sexual images of themselves and share them with their peers. Nevertheless, his comments also minimize his actions and deflect some of the blame onto his victim.

The rhetoric of victim-blaming is quite common in sexting cases. This creates a false equivalence between the consensual sharing of private images and the malicious distribution of private images with the intent to harm and humiliate (Hasinoff, 2015). This kind of response to sexting extends a common practice of blaming the victims of sexual assault for “asking for it” by drinking, being out late, or flirting with the perpetrator. For example, Mike Galanos’ commentary suggests that Allen’s guilt is comparable to that of six young women who sexted consensually and then suffered privacy violations in another case:

Should [Allen] be punished? Yes. Should the six teens in Pennsylvania [who sexted consensually] face consequences? Yes. But let’s kick them off cheerleading squads and sports teams. Make them do community service and take classes on sex crimes. Educate other teens on the dangers of sexting. Pay a price, yes, but these young people shouldn’t pay for this for the rest of their lives.(2009)

It is striking that in his comments about sexting; Galanos does not mention the boys who maliciously distributed the girls’ images in the Pennsylvania case. He, like many

observers, seems to think that teens who sext consensually should be held criminally responsible in exactly the same way as teens who commit sexual privacy violations by distributing images.

In another privacy violation incident that occurred just before the Allen case, the victim-blaming went so far that the victim publicly took responsibility for the incident. In 2007, teen celebrity Vanessa Hudgens apologized for sexting after her private images were distributed without her consent. Like Allen's ex-girlfriend, media commentators held Hudgens responsible for the victimization she suffered. In response, Hudgens issued an official apology: "I want to apologize to my fans, whose support and trust means the world to me. I am embarrassed over this situation and regret having ever taken these photos"(Keating & Zeidler, 2007). Parents quoted in a story about the incident are described as "outraged," "dismayed," and "devastated" at Hudgens for taking the photos initially, but there is not a single comment about the person who took the private photos without permission and distributed them publicly. One parent reflects on Hudgens' celebrity brand as an "innocent, pure" character in Disney Channel's *High School Musical* series and laments that she is now "damaged"(Keating & Zeidler, 2007).¹⁴ Such comments reinforce and reflect enduring ideas that women who are victims of sexual violations are "ruined."

When young women like Hudgens and Allen's ex-girlfriend are victims of privacy violations, their choice to create sexual photos and share them consensually with partners is used to imply that they have caused or invited their own harm. Using mobile phones for sexual communication is often seen as deviant or immoral, so it does not garner the privilege of being legally and socially sanctioned and protected by what Berlant (1997) calls a "zone of privacy." The public discourse about teen sexting usually does not grant that the practice is often a private act for the participants. Like all forms of interpersonal trust, privacy in sexting is violable; however, journalists and prosecutors often assume that privacy is impossible in sexting, even with a trusted partner.¹⁵ Contrast that assumption with the fact that other forms of digital information—financial or medical, for example—is widely viewed in public opinion (and protected by law) as private. In such cases, unauthorized distribution is unexpected and seen as a violation of privacy. Why do such understandings of privacy violations prevail here and not in cases of sexting, where instead the victim is unfairly understood as at fault?

Blaming Sexting

In blaming sexting in general for the incident, commentators further conflate consensual sexting with Allen's violation of privacy. For example, *The Today Show* introduces Allen's segment by commenting: "Sexting not only leads to embarrassment and grief, but many teens who sext are finding the consequences more severe than they ever imagined" (Celizic, 2009). Here, the host is not discouraging teens from committing privacy violations but from sexting entirely. Likewise, the *Orlando Sentinel* article concludes: "His advice to other teens tempted by sexting: 'Don't do it. It's stupid'"

¹⁴ Luckily for Hudgens, a Disney representative officially accepted the star's apology and she was later cast in *High School Musical 3*.

¹⁵ However, research indicates that most sexters expect privacy and that those expectations are usually met. (Albury & Crawford, 2012; Hasinoff & Shepherd, 2014)



(Prieto, 2009). This implies, with typical victim-blaming rhetoric, that Allen's ex-girlfriend was just as "stupid" for sexting as Allen was for maliciously violating her privacy.

Another way media coverage blames sexting rather than Allen for the incident is through the assumption that media technologies cause young people to behave irrationally and immorally. For example, one article invoked "the dangers presented to juveniles by modern communications technology" (Celizic, 2009) to explain Allen's situation. Likewise, the *Orlando Sentinel* article claims that Allen is "one of many" teens doing "something his friends do all the time," and explains: "Most do it for fun" (Prieto, 2009). By situating sexting as a "trend," (Feyerick & Steffen, 2009; Kazdin & Ibang, 2009; Prieto, 2009) journalists imply that Allen is not fully responsible for his actions. Undoubtedly, digital images and email made Allen's violation easier—without these technologies, Allen would have had to produce dozens of photocopies and either mail or hand-deliver them. As Allen points out, "It's just easier now. Everyone has a camera on their phone and everyone has the ability to send those pictures to someone" (Richards & Calvert, 2009, p. 17). Still, the comments in the news coverage implying that both sexting and privacy violations are natural and inevitable consequences of new technology effectively minimize Allen's responsibility for the harm he causes.

On nearly all of Allen's talk show and television news appearances he attempts to repair his reputation by apologizing for the harm he caused and positioning his mistakes as a learning opportunity for others. Unfortunately, in becoming an anti-sexting advocate, Allen conflates consensual sexting with privacy violations. This is an effective strategy for Allen to gain sympathy from the press, but it comes at the cost of confirming the assumption that consensual sexting is wrong and that no teenagers should engage in it. For example, after delivering his sexting-abstinence message on the *Rachel Ray* show, she says to him: "You have taught a valuable lesson today ... you may save other kids from doing the same thing" (Ray, 2009). Walters, Allen's attorney, likewise explains that he and Allen are working with Parry Aftab's Wired Safety organization:

They're going to create an entire online presentation for kids to understand the dangers of sexting. His case, while tragic, is also an incredible learning experience for kids. We're trying to get something good out of it. ... This is what happened to a real person. Watch out and don't do it. (Richards & Calvert, 2009, p. 24)

Similarly, FOX News tells Allen: "Thank you for sharing your story to send all teenagers a message of just how dangerous this can be" ("Fair," 2009). In learning from his mistake and becoming a sexting-abstinence advocate, Allen seems to win universal praise from talk show hosts and news anchors.

The problem with these general sexting-abstinence messages is that, like other campaigns to advise that teens abstain from sex and drugs, they likely will not work. Given that more than half of young adults sext (Klettke, et al., 2014), advocating sexting abstinence contributes to victim-blaming and squanders an opportunity to help young people learn how to navigate digitally mediated sexual communication (Hasinoff, 2015). Moreover, the responsibility usually falls on girls to stop creating these images in the first place (Hasinoff, 2015). This may seem logical given the legal risks and potential for harm, but consider that few people would argue that the solution to intimate partner violence is to avoid all romantic relationships. Thus the popularity of sexting abstinence as a solution to privacy violations can be understood as part of a cultural context that routinely views

women and girls as sexual objects but condemns those who appear to be sexual subjects. In other words, sexting is an act of sexual autonomy and expression that is so outside the bounds of acceptable femininity for some observers that they seem to believe that it invites, and perhaps even justifies, victimization.

Allen could have become a privacy advocate rather than an anti-sexting advocate. The crucial intervention here would be to persuade audiences that the problem is not sexting but instead is intimate partner harm and digital privacy violations. Though the Allen case was uniquely positioned to tell an important story about the harms of digital sexual privacy violations, the simpler conclusion the media discourse offered prevailed: that sexting is “stupid” and no one should do it. To do otherwise would require the important but difficult work of dismantling a number of entrenched assumptions about girls, sexual expression, and digital privacy.

Conclusion: Towards Accountability and Justice

The Allen case was one of the first national public conversations about a digital sexual privacy violation in the US and provided one of the first opportunities to grapple with the nature of and remedy to this new variety of sexual violation. Much of the national media and legal response to sexting and privacy violations since then has repeated these problems by creating new laws criminalizing consensual teen sexting as a misdemeanor and applying child pornography laws to sexters.

Victims of privacy violations in the US lack effective options to address the harm they have suffered. Many victims are primarily concerned with removing their private images from public websites and getting them out of circulation (Citron & Franks, 2014; Wolak & Finkelhor, 2016). This can be difficult to achieve because not all websites have sufficient privacy policies, and unless the victim is under 18 and the image counts as child pornography, US websites are not legally obligated to remove private sexual images because they are not liable for the content their users post. Victims of any age can try filing privacy or emotional distress lawsuits to collect damages, though stalking and harassment laws only cover repeated conduct (Citron & Franks, 2014). Lawsuits are expensive, potentially unproductive if perpetrators are unable to pay damages, and typically require plaintiffs to use their real names, thus risking further publicity (Citron & Franks, 2014).

Laws protecting digital sexual privacy do not exist in every state and do not protect people of all ages or in all relevant situations. As of 2016, victims 18 and older¹⁶ in 34 states can use newly passed “revenge porn” laws; however, each law has particular requirements that limit their applicability. For example, some only cover posting a private image publicly online rather than sending it directly to a third party, and others require proof that the perpetrator knowingly intended to cause emotional distress (Goldberg, 2016). Victims of privacy violations under 18 years old are also not well protected. Revenge porn laws often do not apply, but prosecutors can charge perpetrators with possessing or distributing child pornography, regardless of the perpetrator’s age. These laws also give prosecutors the power to charge teen victims alongside perpetrators, because both have technically violated child pornography laws. As the Allen case demonstrates, child pornography charges were never intended to apply to interpersonal privacy

¹⁶ Most revenge porn laws exclude victims under 18 years old.



violations between peers. Had there been a less harsh and more narrowly tailored law addressing sexual privacy violations, prosecutors in Allen's case might have chosen to use that rather than child pornography charges.

Many incidents go unreported and unaddressed, in part due to inadequate laws and victim-blaming attitudes. In one study, only 16% of victims who experienced threats to expose their private sexual images reported the incident to police (Wolak & Finkelhor, 2016). Likewise, nearly half of these victims did not even report the incident to family or friends; most said that this was due to shame or embarrassment while many said that this was due to fear they would get in trouble, a feeling that it would not help, and/or a sense that they could handle the incident themselves (Wolak & Finkelhor, 2016).

The challenge that cases like Allen's highlight is an enduring problem: How can we hold perpetrators of sexual harm responsible without either demonizing them or shaming and blaming their victims? In general, victims of all forms of sexual violence are not well served by the justice system (e.g. Clark, 2010; Daly, 2014; McGlynn, 2011) or by media coverage of cases (e.g. Cuklanz, 1996). As Daly (2014) explains, victims of sexual violence have a number of justice interests, including validation, vindication, and offender accountability. Perhaps Allen's victim felt vindicated by Allen's conviction as a form of censure. Yet, most of the media response to the case did not validate her experience. Daly explains that to be validated, victims must "not blamed for or thought to be deserving of what happened" (2014, p. 388), and indeed most of media coverage of the case failed on this point.

One small part of the media discourse that might have offered the victim some validation and a sense of offender accountability are Allen's public apologies. Daly explains that offender accountability includes "perpetrators of offences taking active responsibility for the wrong caused [and giving] sincere expressions of regret and remorse" (2014, p. 388). For example, Allen says during a FOX interview:

I highly regret [it] ... I really do, and not just because I got in trouble, I know I hurt the girl, her family. ... I am sorry, I know I hurt her, I know I betrayed her trust, and what I did to her was absolutely horrible. I know I embarrassed her. ... It wasn't ok. I realize that. ("Fair," 2009)

In another interview, Allen says, "I would absolutely love to just tell her that I am so sorry. I took something she trusted me with and used it against her, because I was upset" (Kazdin & Ibanga, 2009). These comments appear to represent Allen's genuine regret and remorse by demonstrating that he understands the harm to the victim and recognizes that his actions were wrong.

Though we do not know what outcome Allen's victim wanted, these statements are important because they resist both the legal construction that he is as an inhuman predator, who would typically be remorseless, and the media's version of the incident blaming the victim and practically absolving Allen. Indeed, rhetoricians highlight the need to analyze and develop forms of public apology, forgiveness, and reconciliation that are meaningful and sincere (Grano, 2014; Hatch, 2006; Villadsen, 2012). The specific power of a public apology is that it addresses both the victim and a general public; it is one of the few occasions audiences have to grapple with the nature of and remedy to many social problems and forms of harm—in this case, the digital violation of sexual privacy. While Allen's public apology may not be enough vindication for his victim, it is striking that

only Allen himself—not the legal system or the media commentators—seems to be offering what victims of sexual harm often want: accountability and a sincere apology.

Acknowledgments

The author thanks Gillian Silverman, Michelle Comstock, Sarah Fields, Sonja Foss, Sarah Tyson, Peter Campbell, and Dan Grano for their generous comments, which improved the quality of the article.

References

- Albury, K., & Crawford, K. (2012). Sexting, consent and young people's ethics: Beyond Megan's story. *Continuum*, 26(3), 463–473.
- Berlant, L. (1997). *The queen of america goes to washington city: Essays on sex and citizenship*. Durham, NC: Duke University Press.
- Brownmiller, S. (1975). *Against our will: Men, women, and rape*. New York: Simon and Schuster.
- Calvert, C. (2009). Sex, cell phones, privacy, and the first amendment: When children become child pornographers and the lolita effect undermines the law. *CommLaw Conspectus*, 18, 1–65.
- Campregher, J., & Jeglic, E. L. (2016). Attitudes toward juvenile sex offender legislation: The influence of case-specific information. *Journal of child sexual abuse*, 25(4), 466–482.
- Celizic, M. (2009, March 10). Teen 'sexting': Youthful prank or sex crime? With child porn charges being leveled, some say laws are behind the times. *Todayshow.com* [Article and video]. Retrieved from <http://www.msnbc.msn.com/id/29613192>.
- Citron, D. K., & Franks, M. A. (2014). Criminalizing revenge porn. *Wake Forest Law Review*, 49, 345–391.
- Clark, H. (2010). 'What is the justice system willing to offer?': Understanding sexual assault victim/survivors' criminal justice needs. *Family Matters*, (85), 28.
- Comartin, E., Kernsmith, R., & Kernsmith, P. (2013). "Sexting" and sex offender registration: Do age, gender, and sexual orientation matter? *Deviant Behavior*, 34(1), 38–52.
- Corrigan, R. (2006). Making meaning of Megan's law. *Law and Social Inquiry*, 31(2), 267–312.
- Cuklanz, L. M. (1996). *Rape on trial: How the mass media construct legal reform and social change*. Philadelphia: University of Pennsylvania Press.
- Daly, K. (2014). Reconceptualizing sexual victimization and justice. In I. Vanfraechem, A. Pemberton & M. N. F (Eds.), *The international handbook of victimology* (pp. 378–396). London: Routledge.
- Draper, N. (2012). Is your teen at risk? Discourses of adolescent sexting in United States television news. *Journal of Children and Media*, 6(2), 221–236.
- Englander, E. (2012). *Low risk associated with most teenage sexting: A study of 617 18-year-olds*. Bridgewater, MA: Massachusetts Aggression Reduction Center.
- Fair punishment?: 'Sexting' teen faces child porn charges (2009, March 13). *FOX & Friends* [Video]. Retrieved May 2, 2009, from <https://www.youtube.com/watch?v=0mEky0KdHPk>



- Feyerick, D., & Steffen, S. (2009, April 8). 'Sexting' lands teen on sex offender list. *CNN's American Morning*. Retrieved from <http://www.cnn.com/2009/CRIME/04/07/sexting.busts/index.html>
- Filler, D. (2001). Making the case for megan's law: A study in legislative rhetoric. *Indiana Law Journal*, 76(2), 315-365.
- Fischel, J. (2010). Transcendent homosexuals and dangerous sex offenders: Sexual harm and freedom in the judicial imaginary. *Duke Journal of Gender Law and Policy*, 17(2), 277-311.
- Foucault, M. (2003). *Abnormal: Lectures at the collège de france, 1974-1975* (1st Picador USA ed.). New York: Picador.
- Freedman, E. B. (1987). "Uncontrolled desires": The response to the sexual psychopath, 1920-1960. *Journal of American History*, 74(1), 83-106.
- Galanos, M. (2009, April 8). Commentary: Is 'sexting' child pornography? [Video and article]. Retrieved from <http://www.cnn.com/2009/CRIME/04/08/galanos.sexting/index.html>.
- Goldberg, C. (2016, 26 Nov). State revenge porn laws. *CA Goldberg Law*. Retrieved from <http://www.cagoldberglaw.com/states-with-revenge-porn-laws/>
- Goldstein, L. (2009). Documenting and denial: Discourses of sexual self-exploitation. *Jumpcut*, 51. Retrieved from <http://www.ejumpcut.org>.
- Grano, D. A. (2014). Michael vick's "genuine remorse" and problems of public forgiveness. *Quarterly Journal of Speech*, 100(1), 81-104.
- Hasinoff, A. A. (2015). *Sexting panic: Rethinking criminalization, privacy, and consent*. Champaign, IL: University of Illinois Press.
- Hasinoff, A. A., & Shepherd, T. (2014). Sexting in context: Privacy norms and expectations. *International Journal of Communication*, 8, 2932-2415.
- Hatch, J. B. (2006). Beyond apologia: Racial reconciliation and apologies for slavery. *Western Journal of Communication*, 70(3), 186-211.
- Henry, N., & Powell, A. (2015). Beyond the 'sext': Technology-facilitated sexual violence and harassment against adult women. *Australian & New Zealand Journal of Criminology*, 48(1), 104-118.
- Henry, N., & Powell, A. (2016). Sexual violence in the digital age: The scope and limits of criminal law. *Social & Legal Studies*, 25(4), 397-418.
- Hinduja, S., & Patchin, J. W. (2015). State sexting laws: A brief review of state sexting and revenge porn laws and policies. *Cyberbullying Research Center*. Retrieved from <http://cyberbullying.org/state-sexting-laws.pdf>.
- Karaian, L. (2012). Lolita speaks: 'Sexting,' teenage girls and the law. *Crime Media Culture*, 8(1), 57-73.
- Kazdin, C., & Ibanga, I. (2009, April 15). The truth about teens sexting: 'Gma' holds a town hall meeting to discuss the growing teen trend. *Good Morning America* [Article]. Retrieved from <http://abcnews.go.com/print?id=7337547>.
- Keating, G., & Zeidler, S. (2007, 7 Sep). Disney backs star after her apology for nude photo. *Reuters*. Retrieved from <http://www.reuters.com/article/2007/09/08/us-hudgens-nude-idUSN0746838620070908>.
- Klettke, B., Hallford, D. J., & Mellor, D. J. (2014). Sexting prevalence and correlates: A systematic literature review. *Clinical Psychology Review*, 34(1), 44-53.

- Laird, L. (2015, Jul 1). Courts are reconsidering residency restrictions for sex offenders. *ABA Journal*. Retrieved from http://www.abajournal.com/magazine/article/courts_are_reconsidering_residency_restrictions_for_sex_offenders.
- Lynch, M. (2002). Pedophiles and cyber-predators as contaminating forces: The language of disgust, pollution, and boundary invasion. *Law and Social Inquiry*, 27(3), 529-562.
- Mastronardi, M. (2003). Adolescence and media. *Journal of Language and Social Psychology*, 22(1), 83-93.
- McGlynn, C. (2011). Feminism, rape and the search for justice. *Oxford Journal of Legal Studies*, 31(4), 825-842.
- Meiners, E. R., Michaud, L., Pavan, J., & Simpson, B. (2011). "Worst of the worst"? : Queer investments in challenging sex offender registries. *Upping the Anti*, 13.
- Newton-Brown, C., Garrett, J., Carbines, A., Northe, R., & Petrovich, D. (2013, December 10). Victorian government response to the law reform committee inquiry in to sexting. *Law Reform Committee*. Retrieved from http://www.parliament.vic.gov.au/images/stories/Govt_Response_Sexting_Inquiry.pdf.
- Nunziato, D. C. (2012). Romeo and juliet online and in trouble: Criminalizing depictions of teen sexuality (c u l8r: G2g 2 jail). *Northwestern Journal of Technology and Intellectual Property*, 10, 57-91.
- Petteruti, A., & Walsh, N. (2008). *Registering harm: How sex offense registries fail youth communities*. Washington, DC: Justice Policy Institute.
- Podlas, K. (2011). The 'legal epidemiology' of the teen sexting epidemic: How the media influenced a legislative outbreak. *Pittsburgh Journal of Technology Law and Policy*, 12, 1-48.
- Pratt, J. (1998). The rise and fall of homophobia and sexual psychopath legislation in postwar society. *Psychology, Public Policy, and Law*, 4(1-2), 25-49.
- Prieto, B. (2009, March 8). 20% of teens have sent nude photos of themselves via cell phone or posted the images on a web site: Now teens such as [Adam Allen], who forwarded pictures of his ex-girlfriend, face child-porn charges. *Orlando Sentinel*, p. A1.
- Ray, R. (2009, April 3). Nancy grace & teen "sexting". *The Rachel Ray Show* [Video]. Retrieved from <http://www.rachaelrayshow.com/show/segments/view/teen-sexting>.
- Richards, R. D., & Calvert, C. (2009). When sex and cell phones collide: Inside the prosecution of a teen sexting case. *Hastings Communications and Entertainment Law Journal*, 32, 1.
- Ringrose, J., Gill, R., Livingstone, S., & Harvey, L. (2012). *A qualitative study of children, young people and 'sexting': A report prepared for the nspcc*. London: National Society for the Prevention of Cruelty to Children.
- Saukko, P. (2003). *Doing research in cultural studies: An introduction to classical and newer methodological approaches*. London: SAGE.
- Simon, J. (1998). Managing the monstrous: Sex offenders and the new penology. *Psychology, Public Policy, and Law*, 4, 452.
- Spade, D. (2012). Their laws will never make us safer: An introduction. In R. Conrad (Ed.), *Against equality: Prisons will not protect you* (pp. 1-12). Oakland, CA: AK Press.



- Tallon, K., Choi, A., Keeley, M., Elliott, J., & Maher, D. (2012). New voices/new laws: School-age young people in new south wales speak out about the criminal laws that apply to their online behaviour. *National Children's and Youth Law Centre and Legal Aid NSW* [Report], Retrieved from http://www.lawstuff.org.au/__data/assets/pdf_file/0009/15030/New-Voices-Law-Reform-Report.pdf.
- Tofte, S. (2007). *No easy answers: Sex offender laws in the us*. New York, NY: Human Rights Watch.
- Tyson, S. (2014). Experiments in responsibility: Pocket parks, radical anti-violence work, and the social ontology of safety. *Radical Philosophy Review*, 12(2), 421-434.
- Villadsen, L. S. (2012). Beyond the spectacle of apologia: Reading official apologies as proto-deliberative rhetoric and instantiations of rhetorical citizenship. *Quarterly Journal of Speech*, 98(2), 230-247.
- Wolak, J., & Finkelhor, D. (2016). *Sextortion: Findings from a survey of 1,631 victims*. NH: Crimes Against Children Research Center & Thorn.
- Wolak, J., Finkelhor, D., & Mitchell, K. J. (2012). Trends in arrests for child pornography production: The third national juvenile online victimization study (njov - 3). *Crimes against Children Research Center*. Retrieved from http://www.unh.edu/ccrc/pdf/CV270_Child%20Porn%20Production%20Bulletin_4-13-12.pdf