

CYBER SEXTORTION AND INTERNATIONAL JUSTICE*

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Normally when we talk about international justice—particularly when convened by a journal of international law—we’re talking about and thinking about international organizations: the ICC, various ad hoc war crimes tribunals, and the like. The law we think about tends to be international law and we tend to be thinking about, when we’re thinking about crime anyway, the grossest sort of mass murders, war crimes, and crimes against humanity—crimes that are conditioned in our imaginations by the Nuremburg experience and the progeny of that.

What I want to talk about today is something that cuts in almost exactly the opposite direction: crimes that we think of as the most local crimes we have. They’re sufficiently local that in the American political system, and in our federal system, they tend not to be federal in character. They tend to be prosecuted at the state level. There is no international law of this subject. I think we are probably many years from people knowing to think about this in the language of international law.

And yet, what I’m going to try to persuade you of here is that this subject is actually the cutting edge of some kind of international justice. That is the cyber security of teenagers and young adults. If that sounds crazy, bear with me; it is little bit crazy, but that’s kind of the world we live in.

A couple of years ago, I was writing a book with Gabriella Bum, whom some of you may know. She is a prominent international law expert up at Harvard. She and I were writing a book about the future of violence, called appropriately “The Future of Violence.” We were interested in the problem of drone strikes, the ability of a state to reach out and commit an act of violence against somebody in a different state half-way around the world, without ever leaving your living room couch, that is,

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at least if your living room couch is at the Nellis Air Force Base in Nevada. And I started thinking about the question of what other kinds of acts of violence a person can perpetrate against somebody at that level? What else, other than a drone strike, can you do to somebody—and what can *I* do to somebody—in Yemen if I’m in the United States?

The theory behind this question was that drone technology is getting smaller, it’s getting cheaper, and it’s getting weaponized. How long will it be before I can conduct my own drone operation in Yemen? Are there crimes like that, in which I can attack somebody who is halfway around the world? Some of the answers to these questions are obvious: that’s what international identify theft is, right?

As I was looking into this I discovered a really interesting story. It’s a story of a gentleman in southern California who is going to get out of prison pretty soon. His name is Luis Mijangos. And Luis Mijangos, according to a number of press stories, had written some malware to do what the prosecutors colloquially called “sextortion” of women and girls. A lot of his victims were under age. He would infect their computers with his malware and he would turn their webcams against them by turning their webcams on and remotely operating them, getting pictures of his victims in various state of undress, and then using those pictures to coerce them, or “sextort” them, into producing pornography for him.

Now, the number of victims in this case was what really caught my eye: The FBI stopped counting at around 240. You’re talking about very, very large numbers of victims. The conduct in question was unbelievably brutal. And here’s what was interesting: not all of the victims were in the United States. This struck me as a really interesting fact. This was the first time I think I could identify in human history, where it was possible to commit something like a sexual assault, as in you are actually coercing somebody to engage in sexual activity, who was not in the same country as you.

So, I put together a team at Brookings to try to study this problem and figure out how much sextortion there is in the world. This turns out to be a really interesting and complicated question, and it’s a question that nobody knows the answer to. The Justice Department, right around the time we published this study, put out its own document that said sextortion was the single fastest growing threat to children online. And in response to our study at Brookings, then Senator Barbara Boxer wrote to then Attorney General Loretta Lynch, asking her how many sextortion cases the Justice Department could identify. Loretta Lynch could not answer the question.

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One of our recommendations in the study was that the Justice Department needs to keep data on this subject. Nobody knows today how much of this stuff there is. What I want to convince you all of is: a) that there is a huge amount of it; b) that it's multivariate in character, that is, it's really, really wide-ranging, and I'll talk about some of the different kinds of sextortion; and 3) that it's inherently interstate and international in character. In other words, crimes that we would normally think of as the most local of local crimes, your garden variety sexual coercion cases, we now have to think about in an international context.

In this study, we looked at cases that we could identify from either the press, or from other cases that we had identified. We were only looking at cases that had been prosecuted, so think of this data as the very thin edge of the wedge. This is the largest data set that anybody has ever created on this subject, and as you'll see, it's not that big. That's not because there aren't a lot of cases; it's because a huge number of them do not get prosecuted, and because nobody counts them.

Our understanding of what is a crime, is hugely conditioned by what people count—what somebody actually takes the time to tally up. We have a sense of what the murder rate is because the FBI and the Bureau of Justice Statistics count murders. And they count certain other crimes in uniform crime statistics data. Sextortion is not in the uniform crime statistics data. So, as a crime, it sort of doesn't exist.

We identified seventy-eight cases. They were almost all, not all, but almost all federally prosecuted. Now that's an interesting fact, because that is not true of rape. Generally speaking, sex crimes are not prosecuted at the federal level, assuming that there's no interstate dimension, that there's no human trafficking, or it doesn't involve children. Assuming that you're not dealing in child pornography, sex crimes are generally going to be prosecuted at the local level. That is not true of sextortion. These tend to be prosecuted at the federal level and there is an interesting reason for that.

Three of these cases are foreign prosecutions. One is from the Netherlands, one is from Israel—the Israeli case is quite interesting actually, it resulted in an Israeli high court opinion—and I believe one of them is Mexican. That said, the majority are domestic and that's not because there's an epidemic of sextortion in the United States. There is more reporting about it in the United States. The word "sextortion," and the basket of terms we were using to find cases, are American terms. There are actually a few categories of sextortion that seem endemic elsewhere.

After we did this study, the BBC did a remarkable study of sextortion cases directed at women in the Muslim world, and women in Britain

(and actually some men in Britain too) who were being extorted for sometimes very large amounts of money, and mostly from Morocco. There was a whole call center in Morocco that was devoted to these sextortions. There were also call centers in the Philippines that were running sextortion rackets, a lot of them directed at American military people. Those are the sort of the interesting variants that we see here. But our study focused not on sextortion for money but sextortion for sexual images.

It turns out that the experience that we had with Luis Mijangos, where one person is producing a huge number of victims, is actually not that uncommon. These were seventy-eight cases producing a bare minimum of 1,400 victims. That number is actually deceptive; it is the number of people who were specifically identified in the court documents that we looked at. I think the actual number of victims is almost surely closer 6,500, and even that may a lowball estimate because according to the FBI, one case alone, a case by a guy named Ivory Dickerson, may have had 3,800 victims all by itself. The Silicon Valley term that people use when you can do something, and then do it again, and the marginal cost of doing it again is very low, is “scaling.” This is really the first time in human history that sexual violence scales.

And it scales for the same reason that Uber scales. Writing the code to get the first person to come and pick up the first person and give that person a ride, is really expensive. The marginal cost of that thousandth person over the 999th is near zero. A lot of these things are pretty automated and it’s really easy once you figure out how to do it to figure out how to do it again and again and again and again. That’s not true of most sexual violence. Sexual violence, normally speaking, is risky; it’s time consuming. You actually have to get somebody in an isolated setting, and you take risk every time you do it. When you do it again, you assume the risk again, and you have to invest the time again.

Think about serial rapists: what’s a really prolific serial rapist? Is it 50 people, 50 victims? That’s a memorably horrible case. The sextortionists put that to shame. The sextortionists who are prolific are prolific with the decimal point in a very different place. In 13 of our cases there were more than 100 victims. In a few of the cases there were thousands.

A little bit of demographics of the sextortion problem: I’ve yet to find a female sextortionist. I’m still looking. This seems to be a male problem pretty exclusively. The adult victims are almost all female, so I think when you’re thinking about sextortion as a problem among adults, you really can think of it as a species of violence against women, and nothing more complicated than that.

The wrinkle is that most of the cases involve at least some minor victims, which is why the Justice Department tends to think of this not as a violence against women problem, but as a child exploitation problem. If you look at the Justice Department's characterization of sextortion, it always treats it as a child exploitation issue (I actually have a real problem with that). When you look at the cases involving minors, a substantial minority of the minor victims are male. The reality is that we should think of sextortion as a problem that involves mostly child victims and some adult victims; the child victims will be disproportionately but not exclusively female; the older you get, the more female the victim population is going to be.

Alright so how do you do sextortion? This is not a "how to" guide, but it is what is actually happening here. The vast majority of these cases are simple catphishing, social media manipulation, cases. This is the overwhelming majority of the cases that involve minors, and it works like this: somebody friends you on Facebook or comments on Kik messenger or Snapchat. They pretend to be someone who goes to your school, and they trick you into sending them a nude picture, often by sending one of themselves. You find out later that the picture is not actually a picture of the person whom you were interacting with. But you've sent one back, and once the perpetrator has one, he uses that to coerce the production of more. It tends to escalate. It starts out with nude pictures. The more leverage the sextortionist has, the more vile the demands become. And it becomes a form of sexual slavery, in some cases relatively quickly. The language that the sextortionist uses; they don't call it sextortion, they call it slaving. They call it "cam slaves." There's a whole vocabulary here that sort of sounds more in slavery than in the clinical words I'm using. The demands sometimes get very extreme, and tend to be complied with. In our cases, we saw sex involving younger siblings, sometimes much younger siblings—five, six, seven years old. We saw maiming. And we saw cases involving animals. These cases are not playful sexting. Think of this as something awesomely abusive.

The second of category of sextortion cases involves password hacking. That is, somebody guesses your password or tricks you into revealing a password by one means or another, and he accesses some body of pictures or whatever that you have from elsewhere in your life, maybe with a significant other, maybe for reasons of your own. And he uses that data to then coerce activity.

The final category, of which Mijangos is an example, is a smaller subset. Some of these people are very talented hackers and they will actually write malware, infect people's computers, and turn their

webcams against them. That's a small subset, and it tends to involve the adult victims, who are a little bit harder to trick most of the time.

This brings us to the international department, and the reason we're here today to talk about this. Almost all of these cases, sixty three percent of the cases, involve significant interstate elements. That makes this different from other forms of sexual violence, where usually, unless there's human trafficking or child pornography, we think of sex crimes as local. Some of these cases involve a lot of different jurisdictions. And a surprising number of the cases cross international borders. One of the cases we looked at involved somebody running a sextortion ring out of the U.S. embassy in London. There were other cases where people domestically had large numbers of victims overseas. We've actually been contacted by a victim overseas wanting to know when her sextortionist was getting out of prison. So again, I ask you to think about this as the thin edge of a very large wedge. This is what we can see: sixteen percent of the cases that we're talking about are already international and the number of victims is in the thousands.

So what's the law that we're dealing with? For present purposes, the key point is that we're not dealing with international law here. Most states don't have on point laws at all. The U.S. law, the federal law that we have to deal with this is a strange patchwork: when the victims are children, you've got the child exploitation and child pornography statutes, which are extremely powerful. When none of those available, you end up with the normal interstate extortion statute, which has a low for two-year statutory maximum sentence. The workhorse statute in adult sextortion cases is the interstate stalking statute, which is actually a pretty powerful little statute. But if you think about what morally offends you about sextortion, it's almost glancingly related to the statute at issue. Then finally, for the cases where you have unlawful acts with respect to people's computers, there's the good old Computer Fraud and Abuse Act; this is a little bit like catching Al Capone for tax evasion.

The general statutory problem in the United States is that, unless your victims are children, the statutory maximum sentences for these crimes are going to be quite low relative to the extreme abusiveness of the conduct. The Justice Department the other day just got a sentence in a major sextortion case in New Hampshire. It was prosecuted by a woman named Mona Sedky with whom I did a podcast on prosecuting these cases if you are interested in the Justice Department perspective on this. Sedky got a really good sentence for this guy; it's nine years. If you ask yourself about somebody who did, in physical space, what he did in virtual space, and you ask what kind of sentence one might

expect, I think that would be on the low end of what you could expect in those situations. In our study, we did a comparison of physical world sentences in sex abuse cases and sextortion cases, and the disparities are really quite dramatic.

For present purposes, the relevant point is that the United States is in way better shape than most other places in the world on this. And so first of all, hats off to the Justice Department. They're actually prosecuting dozens of these cases; we were not able to find anything like that in any other country. Number two, there are a lot of countries where it's not even clear that this stuff is illegal. The fabric of U.S. law is very dense. One way to think about sextortion is as a form of sexual violence. Another way to think about sextortion—both accurate by the way—is that it's a form of data breach. If you are Sony and the North Koreans hack you, that's a data breach and we know how to think about that legally. Well, this is data breach at a human interpersonal level. You have pictures of yourself that you took for reasons of your own, and you lose control over them. You become subject to somebody's extortionate demands as a result. There are a lot of countries where data protection laws are very weak. This is the sort of the extreme human side of having weak data protection laws.

Finally, I want to say that we need to think about what international crime is in a more imaginative fashion. This is stuff that is never going to be prosecuted by the ICC. The ICC is the prosecutor of the biggest war crimes, right? These are the smallest person-to-person abuse crimes. The amount of effort that it takes to try one of these cases when there is a significant international dimension is extraordinary. We have no common definition of the crime, even within the United States, let alone abroad.

What I want to suggest is that this reality is more norm than exception as we look to the future. That is, in a world in which we are all communicating constantly with people overseas, a world in which you don't even know whether the people you are communicating with are overseas or not, a huge number of things that we think of as local person-to-person misconduct are actually properly thought of as matters of international justice. To the extent that we don't expand our concept of international justice, there are a huge number of day-to-day victims of really ugly crimes who are going to be without remedy.