

## TO CATCH A PREDATOR

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[D]esire is never renounced, but becomes preserved and reasserted in the very structure of renunciation.

—Judith Butler<sup>1</sup>

### INTRODUCTION

In the last two decades, a new term—"sexual predator"—has arisen to describe criminals who commit sexual offenses against children. We used to refer to such offenders as "pedophiles" or perhaps "child molesters." Since this new terminology first emerged in the 1990's, the word "predator" has become a term of art in legal regulation, and a mainstay in media

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<sup>1</sup> JUDITH BUTLER, *EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE* 117 (1997).

reports and in the popular imagination.<sup>2</sup> How did the “pedophile” become the “predator”? And what were the effects of this transformation?

As the category took shape, a vast new legal apparatus arose to regulate and monitor this emerging species of criminal.<sup>3</sup>

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<sup>2</sup> First emerging in crime fiction, the term “predator” as applied to sex offenders entered the legislative arena in the early 90’s and appeared for the first time in the Supreme Court’s jurisprudence in 1997. *Kansas v. Hendricks*, 521 U.S. 346 (1997). See Adam J. Falk, *Sex Offenders, Mental Illness and Criminal Responsibility: The Constitutional Boundaries of Civil Commitment after Kansas v. Hendricks*, 25 AM. J. L. MED. 117 (1999). See generally PHILIP JENKINS, “GO AND SIN NO MORE”: THERAPY AND EXORCISM IN THE CONTEMPORARY RHETORIC OF DEVIANCE (2001) (offering historical account of emergence of term predator); PHILIP JENKINS, MORAL PANIC: CHANGING CONCEPTS OF THE CHILD MOLESTER IN MODERN AMERICA (1998). For a general survey of predator laws see Eric S. Janus Robert A. Prentky, *Sexual Predator Laws: A Two-Decade Retrospective*, 212 FED. SENTENCING REP. 90 (2008).

A particularly influential book from 1993 sounded the alarm: “[S]exual predators have crossed an osmotic membrane. They can’t step back to the other side—our side. And they don’t want to. If we don’t kill them or release them, we have but one choice. Call them monsters and isolate them.... I’ve spoken to many predators over the years. They always exhibit amazement that we do not hunt them. And that when we capture them, we eventually let them go.” Andrew Vachss, Editorial, *Sex Predators Can’t Be Saved*, N.Y. TIMES, Jan. 5, 1993, at A14, available at [http://www.vachss.com/av\\_dispatches/disp\\_9301\\_a.html](http://www.vachss.com/av_dispatches/disp_9301_a.html).

<sup>3</sup> Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified as amended in scattered sections of 18 and 42 U.S.C.) unified the previous state run sex offender registry systems and created national child abuse and sex offender registries, increased federal criminal penalties for violent and sexually violent crimes against children, and provided grants to states to establish, enhance, and operate civil commitment programs for sexually dangerous persons.

New methods developed<sup>4</sup> to detect and scrutinize him.<sup>5</sup> The term “predator” implied that the offender was relentless and animal-like; thus, it no longer sufficed merely to send him to jail. After his release, we now had to register him, track him for the rest of his life,<sup>6</sup> or commit him indefinitely to a mental hospital.<sup>7</sup> Some states began to castrate him.<sup>8</sup>

Since the term “predator” first emerged, its meaning has expanded and mutated to include a broadening array of sex

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<sup>4</sup> The attempt to catch the predator before he strikes has led to the rise of sting operations such as the ones enacted by *To Catch a Predator*, but also to the explosion of prosecutions for downloading child pornography. The decision to vigorously pursue “downloaders” has been strengthened by new, albeit controversial, studies purporting to show that possession of child pornography leads inevitably to child predation. See Michael Bourke Andres Hernandez, *The Butner Study Redux: A Report of the Incidence of Hands-on Child Victimization by Child Pornography Offenders*, 24 J. FAMILY VIOLENCE 183 (2009). Of course, even if viewing child pornography does not necessarily lead the viewer to molest a child, there are still reasons to prosecute the downloader; he helps feed the market for child pornography and he contributes to the harm experienced by the child victim.

<sup>5</sup> I use the masculine advisedly. Until the recent “sexting” cases, discussed *infra*, the predator has always been pictured as a man in public policy and in popular culture. See David Finkelhor, *The Prevention of Childhood Sexual Abuse*, 19 FUTURE CHILD. 169, 171 (2009); Janis Wolak et al., *Online “Predators” and Their Victims: Myths, Realities, and Implications for Prevention and Treatment*, 63 AM. PSYCHOL. 111, 118 (2008). *To Catch a Predator* has never once netted a female predator.

<sup>6</sup> Section 302 of the Adam Walsh Act establishes procedures for the potential lifetime commitment of a “sexually dangerous person.” 18 U.S.C. § 4248(a) (codified at Title 18, Sections 427 and 4248). These provisions were upheld in *United States v. Comstock*, 130 S.Ct. 1949 (2010). See generally Richard G. Wright, *Sex Offender Post-Incarceration Sanctions: Are There Any Limits?*, 34 NEW ENG. J. CRIM. CIV. CONFINEMENT 17 (2008).

<sup>7</sup> *Kansas v. Hendricks*, 521 U.S. 346 (1997). See also *supra* text accompanying note 6 (discussing indefinite civil commitment provisions of the Adam Walsh Act).

<sup>8</sup> See, e.g., Kris W. Druhm, *A Welcome Return to Draconia: California Penal Law § 645, The Castration of Sex Offenders and the Constitution*, 61 ALB. L. REV. 285 (1997).

criminals.<sup>9</sup> The category now encompasses a diverse range of offenders, from the most violent child rapists to teens who possess “child pornography”<sup>10</sup> (a term that has an extremely expansive definition in its own right).<sup>11</sup>

Indeed, as the category of predator has grown, it has become increasingly unstable. A salient example comes from the recent epidemic of “sexting” prosecutions, which began in earnest in early 2009.<sup>12</sup> These cases prosecute teens as sex offenders for making child pornography of themselves—taking sexual pictures of themselves with their cell phones and texting them to their friends or sexual partners. Now the teen who creates child pornography of herself is a “predator.” How did a

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<sup>9</sup> Many of whom might not have previously been categorized as such at all. See Amy Adler, *The Perverse Law of Child Pornography*, 101 COLUM. L. REV. 209 (2001); see, e.g., Radley Balko, *Grandma Arrested for Child Porn*, REASON.COM (May 4, 2009), <http://reason.com/blog/2009/05/04/grandma-arrested-for-child-por>.

A portion of the Adam Walsh Act (42 U.S.C. § 16911(5)(A) (2006)) provides for the “[e]xpansion of definition of ‘specified offense against a minor’ to include all offenses by child predators.” 42 U.S.C. § 16911(7) (2006) (emphasis added). The term *predator* now applies to any offender who engaged in “[a]ny conduct that by its nature is a sex offense against a minor” (*id.* at (I)) and includes offenders who possessed, but did not create, child pornography. *Id.* at (G). The Act also applies to teens, requiring states to include offenders who were over the age of fourteen at the time of the offense in sex offender registries. 42 U.S.C. § 16911(8). The term “predator” thus encompasses a vast array of criminals.

<sup>10</sup> On the exploding category of the child who is also a sex offender see generally HOWARD BARBAREE WILLIAM L. MARSHALL, *THE JUVENILE SEX OFFENDER* (2008).

<sup>11</sup> See generally Amy Adler, *Inverting the First Amendment*, 149 PA. L. REV. 921 (2001).

<sup>12</sup> See, e.g., *Miller v. Skumanick*, 605 F. Supp. 2d 634 (M.D. Pa. 2009), *aff’d* *Miller v. Mitchell* 598 F.3d 139 (3d Cir. 2010). In 2010 at least sixteen states introduced or considered bills aimed at sexting. Many more states have now passed legislation or are contemplating doing so. See NAT’L COUNCIL ON STATE LEGISLATURES, 2010 LEGISLATION RELATED TO “SEXTING,” available at <http://www.ncsl.org/default.aspx?tabid=19696> (last visited May 30, 2011); Tamar Lewin, *Rethinking Sex Offender Laws for Youth Texting*, N.Y. TIMES, Mar. 20, 2010, available at <http://www.nytimes.com/2010/03/21/us/21sexting.html>.

body of law designed to protect children from predators come to be used against the children it was designed to protect? How did the law come to picture the predator and the victim as one and the same person?

I want to suggest that the seeming illogic of the sexting cases—the simultaneous expansion and disintegration of the category “predator” that they signal—in fact follows a deeper logic of cultural fantasy and desire. In this paper, I explore that cultural fantasy by turning to a wildly popular television series called *To Catch a Predator*, which played a dramatic role in shaping the category of “predator” in popular imagination, in public policy and in law.

My argument is that *To Catch a Predator* functioned as a realm of regulatory fantasy that served to restrict, produce, and fracture desire. In my view, the show’s invocation of the category of predator both constituted and destabilized that category in ways that have shaped the legal discourse on child predation. In this Article, I offer two different but related readings of *To Catch a Predator*. The first reading pictures the show as producing a kind of disavowed child pornography. The second reading, psychoanalytic in approach, pictures the show as a spectacle of sadomasochism and a scene of oscillating and proliferating desire. Here I focus on the audience’s and the predator’s shifting pleasure, self-beratement and shame. Ultimately, I suggest that our surprising identification with the predator leads us to disavow that identification through the force of law.

Part I describes *To Catch a Predator*’s formula. Part II explores the show’s ratings success, its extraordinary influence on public policy, the lawsuits it provoked, and the vociferous criticism it received. In Part III, I offer two different readings of the show as a scene of fantasy. In the first, I argue that the show inadvertently spreads the very spectacle of the sexual child that it seeks to shut down. In the second, I use Freud’s essay “A Child is Being Beaten” as a template through which to read the show as an SM scene.

## **I. The Scene of the Crime**

*To Catch a Predator*, a wildly popular network television

series, netted would-be child predators in a sting operation and filmed them as they were caught and confronted on camera. The series began in 2004, when *Dateline NBC*, the news magazine show, had fallen into a ratings slump. Searching for a new formula, *Dateline* began broadcasting a series entitled *To Catch a Predator*. Joining forces with a vigilante group called Perverted Justice, *Dateline* used “decoys”—adults posing as 13 to 15 year old teenagers online—to engage in explicit sex chats with men.<sup>13</sup> The decoys lured the men to a sting house with the promise of sex, but they were met instead by a camera crew and, ultimately, the police.

Once the would-be predator arrives at the sting house, the show progresses through a series of formulaic scenes. First the decoy, usually a young looking woman named Del who works for Perverted Justice, answers the door for the predator, invites him in, then quickly excuses herself and disappears.<sup>14</sup> She is replaced by Chris Hansen, the host of *Dateline*.<sup>15</sup> A tall, preppy, white guy, Hansen strolls into the kitchen of the house with the air of a man who has just been called off the golf course and is irritated about the interruption. Hansen has been watching on hidden camera and has been privy to the secret online chats between the predator and the decoy. Skeptical, all seeing, all knowing, he’s not just a man, but “The Man.” In fact, refusing to name himself, perhaps Hansen is not just “The Man” but some sort of avenging god, or at least Daddy or the police. (Almost all of the would-be predators believe that Hansen is either the

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<sup>13</sup> See *Conradt v. NBC Universal, Inc.*, 536 F. Supp. 2d 380, 384 (S.D.N.Y. 2008) (providing a description of the show). The chats are often explicit: “Sometimes the decoys act cager about having sex.” Chris Hansen *Dateline NBC: A Cyber Twilight Zone in Ft. Myers, Fla.*, (MSNBC television broadcast May 10, 2006) [hereinafter *Ft. Myers Sting*], available at <http://www.msnbc.msn.com/id/12728348/>.

<sup>14</sup> Del was twenty-two years old when the show began. *PeeJ Profile: Del Harvey*, PERVERTED JUSTICE.COM, <http://www.perverted-justice.com/?pg=profiledel> (last visited May 31, 2011). Del is not only accomplished at pretending to be a teenager, but is also a convincing cross-dresser, performing as “male and female and ages 10 to 15 and every ethnicity in-between,” depending on the predator. *Dateline NBC: Reflections on To Catch a Predator* (NBC television broadcast Mar. 13, 2007) available at <http://www.msnbc.msn.com/id/17601568> [hereinafter *Reflections on Predator*].

<sup>15</sup> *Conradt*, 536 F. Supp. 2d at 384.

decoy's father or a police officer).<sup>16</sup> In any event, the predator senses Hansen's authority; it is remarkable how many of them obey instantly.

As Hansen begins peppering him with a series of questions,<sup>17</sup> the predator typically insists that he had no intention of acting out his online "fantasies."<sup>18</sup> This prompts Hansen to go on the attack. Increasingly incredulous and contemptuous, Hansen reads back in painstaking, salacious detail the predator's sexual chat log with the decoy.<sup>19</sup> This recitation of the sordid chat log often goes on to the point where the predator literally begs for mercy, sometimes sobbing, reduced to his knees, pleading with Hansen to please, please stop.<sup>20</sup>

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<sup>16</sup> *Id.* Hansen's dual role as father/policeman suggests the intersection that the show occupies between the power of the state and the psyche. Although I don't pursue it here, in my view, Hansen is not only the daddy and policeman but also the analyst: the predator plays the child, the criminal and the analysand.

<sup>17</sup> See, e.g., *To Catch a Predator: November 2005 Virginia Sting* (NBC television broadcast Nov. 10, 2005), available at <http://www.msnbc.msn.com/id/9927253/> ("What are you doing here?"); *To Catch a Predator: September 2006 Georgia Sting* (NBC television broadcast Sept. 13 2006), available at <http://www.msnbc.msn.com/id/14824427/> [hereinafter *Georgia Sting*] ("Why are you here?").

<sup>18</sup> See *Dateline NBC: April 2006 Ohio Sting*, (NBC television broadcast Apr. 26, 2006) [hereinafter *Ohio Sting*], available at <http://www.msnbc.msn.com/id/12503802/>.

Hansen: You ask her if she's horny?

Stacey: What's wrong with that?

Hansen: You ask if she does anal.

Stacey: It's a question . . . It's just talking. The Internet and real life are two different things.

*Id.*

<sup>19</sup> For example, in one episode, Hansen says, "The problem is that I have the transcript of your online chat. Want to try again?" *Ohio Sting*, *supra* note 18.

<sup>20</sup> See, e.g., *id.* (The predator groans: "[O]h God, stop okay?").

At this point comes the final blow. Hansen announces: "I'm Chris Hansen with *Dateline NBC*" and tells the predator that he is being filmed for national TV. And then, to drive home the predator's spectacular ruin, comes what I call the "money shot."<sup>21</sup> We watch as a swarm of cameramen surround the predator, pointing their cameras at him. Susan Sontag told us that the camera was predatory like a gun.<sup>22</sup> If only she had lived to see this show. "You are free to leave now," announces Hansen, and the predator, who has been groveling on the ground, stands up and departs. But of course he is not free.<sup>23</sup> When he exits the house, a swarm of heavily armed policemen tackle him, cuff him, and arrest him. As one journalism critic writes, the police handle the predator "as if he has just shot the president."<sup>24</sup>

## II. The Show's Impact: Ratings, Suicide, and Legislation

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<sup>21</sup> I borrow the term of course from the vernacular of pornography. See, e.g., LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE "FRENZY OF THE VISIBLE"* 45 (2d ed. 1999).

<sup>22</sup> SUSAN SONTAG, *In Plato's Cave*, in *ON PHOTOGRAPHY* 3, 14 (2001).

<sup>23</sup> See, e.g., *Georgia Sting*, *supra* note 17 ("He's free to leave, but he won't get very far . . . He's arrested and taken away.").

<sup>24</sup> Douglas McCollam, *The Shame Game*, COLUM. JOURNALISM REV., Jan./Feb. 2007, at 28–33, available at [http://www.cjr.org/feature/the\\_shame\\_game.php](http://www.cjr.org/feature/the_shame_game.php).

A major force in public policy, *To Catch a Predator* was also “ratings gold.”<sup>25</sup> Indeed, it became a cultural phenomenon, the subject of everything from Saturday Night Live skits to college drinking games. *Predator* proved such a ratings bonanza for *Dateline* that it became a staple of sweeps week.<sup>26</sup> NBC built it into a network franchise.<sup>27</sup> The show regularly outdrew anything else in the network’s primetime fare.<sup>28</sup> While *To Catch a Predator* has been repeatedly praised<sup>29</sup> as performing a public

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<sup>25</sup> James Poniewozik, *Mark Foley's Real Sin Was : Breaking America's Favorite Taboo*, TIME, Oct. 08, 2006.

<sup>26</sup> See also *Reflections on Predator*, *supra* note 14. *Predator* also began taking on a cultural caché value all on its own. *Inter alia*, it inspired a drinking game (Barry Freed, *To Catch a Predator Drinking Game*, TELLHIMFRED.COM (Sept. 26, 2006), <http://tellhimfred.com/2006/09/26/to-catch-a-predator-drinking-game/>) and an episode of *South Park* (*South Park: Le Petit Tourettee* (Comedy Central television broadcast Oct. 3, 2007). For discussion of *Predator* as a social phenomenon see also Monica Bell, *Grassroots Death Sentences? The Social Movement For Capital Child Rape Laws*, 98 J. CRIM. L. CRIMINOLOGY 1, 18 (2007) (describing Hansen as a “folk hero”).

<sup>27</sup> “Ratings for the [series] that has become a network franchise, have averaged 9.1 million viewers, compared with 7 million viewers for other ‘Dateline’ episodes, according to Nielsen Media Research.” Allen Salkin, *Web Site Hunts Pedophiles, and TV Goes Along*, N.Y. TIMES, Dec. 13, 2006, available at <http://www.nytimes.com/2006/12/13/technology/13justice.html?pagewanted=all>. See also Douglas McCollam, *supra* note 24 (describing the show as “rarest of rare birds in the television news world: a clear ratings winner. The show regularly outdraws NBC’s other primetime fare . . . . The show’s ratings success has made it a sweeps-week staple and turned Chris Hansen into something of a pop-culture icon.”); Brian Stelter, *To Catch A Predator Is Falling Prey to Advertisers’ Sensibilities*, N.Y. TIMES, Aug. 27, 2007, available at <http://www.nytimes.com/2007/08/27/business/media/27predator.html> (“In July, 19 of MSNBC’s 25 highest-rated hours were late-night ‘Predator’ reruns.”).

<sup>28</sup> Douglas McCollam, *supra* note 24.

<sup>29</sup> The *Conradt* Court notes that the show has “been the subject of praise. Some have argued, for example, that the show has ‘increased public awareness of Internet dangers by trading the use of guns to pursue criminals for televised, large-scale Internet sting operations to track down sex offenders.’” 536 F. Supp. 2d 380, 398 n.10 (S.D.N.Y. 2008) (quoting Bridget M. Boggess, *Attempted Enticement of a Minor: No Place for Pedophiles to Hide Under 18 U.S.C. § 2422(B)*, 72 MO. L. REV. 909, 909 (2007)).

service,<sup>30</sup> it also gave rise to two high-profile lawsuits against

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<sup>30</sup> *To Catch a Predator* has led to numerous convictions. Perverted Justice claims a one-hundred percent conviction rate for all of its stings, including those conducted on *To Catch a Predator*. *Info for Police*, PERVERTED JUSTICE.COM, <http://www.perverted-justice.com/index.php?pg=policinfo> (last visited June 3, 2011).

Most of the men *To Catch a Predator* nets plead guilty. See Amy Rokuson, *To Catch a Predator Gets Caught: Are NBC's Television Journalists Sacrificing Media Ethics And Legal Procedures For A Chance In The Spotlight?*, 19 SETON HALL J. SPORTS ENT. L. 511 (2009) Nonetheless, some critics have questioned the show's effectiveness in fighting crime. For example, Lt. Joseph Donohue, head of the New York State Internet Crimes Against Children Task Force, raised the concern that non-police decoys impersonating teenagers "may be too aggressive, not understanding the need to let predators initiate the sexual chat and therefore not gathering chat-log evidence that will stand up in court." See Salkin, *supra* note 27. At least one prosecutor declined to prosecute any of the arrests made as a result of the show's sting operation in his jurisdiction, viewing the evidence as tainted because of the show's methods. That prosecutor cited "tainted evidence due to 'amateur involvement' and lack of jurisdiction because the suspects and decoys were not in his county during the online chats." Rokuson, at 513. He was later honored by the Texas District and County Attorneys Association for "steadfastly refus[ing] to take on cases contaminated by the '*To Catch a Predator*' television show." *Judge John D. Roach Named Lone Star Prosecutor*, PROSECUTOR, Mar.-Apr. 2009, available at <http://www.tdcaa.com/nodc/4192>. See also *Group Media Busts Archives*, PERVERTED JUSTICE.COM, <http://www.perverted-justice.com/?groupmedia=byDate> (last visited June 3, 2010) (claiming that an independent calculation made using the numbers provided on Perverted Justice's website indicates that the per-sting conviction rate for the show ranges from four to ninety-two percent, and that in total, only forty-seven percent of the "busts" on the show have led to convictions).

the show,<sup>31</sup> and to a cottage industry of vociferous criticism.<sup>32</sup> Ultimately the controversy was significant enough that NBC halted its investigations in 2008.<sup>33</sup> Although *Dateline* no longer enacts stings, *Predator* lives on: old episodes, with additional, previously unaired, footage have become a new series called *Predator Raw: The Unseen Tapes*, on MSNBC, NBC's sister channel. It is one of the most popular shows on MSNBC.<sup>34</sup>

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<sup>31</sup> See *Conradt*, 536 F. Supp. 2d, at 380 (S.D.N.Y. 2008) (noting that plaintiff alleged NBC caused her brother's suicide by humiliating him on show); *Bartel v. NBC Universal, Inc.*, 543 F.3d 901 (7th Cir. 2008) (noting that producer at NBC alleged wrongful termination for questioning show's ethics). See also Marcus Baram, *Turning the Tables on To Catch A Predator: Fired Producer Marsha Bartel Sues NBC for \$1 Million, Claims Show Goes Too Far*, ABCNEWS.GO.COM (June 5, 2007), <http://abcnews.go.com/US/story?id=3235975page=1>. Bartel asserted that NBC's relationship with local law enforcement was unethical, claiming that the network provided the police with video equipment and video tapes and "unethically pays or indirectly reimburses law enforcement officials to participate in the 'Predator' stings in order to enhance and intensify the dramatic effect of the show." *Id.*

<sup>32</sup> Critics attack the show for a range of issues, including, among other things, its arguable violation of journalistic ethics. Many of these ethical problems were outlined by the court in the *Conradt* case. *Conradt*, 536 F. Supp. 2d at 398 n.9 (S.D.N.Y. 2008) (quoting the SPJ CODE OF ETHICS). The *Conradt* court detailed several aspects of journalistic codes of ethics that the show may have violated, such as the duty to avoid "staged news events." *Id.* For other high profile criticisms of *Predator* see also Gary Hill, *Putting Predator Under the Microscope*, SPJ ETHICS ANSWERS, <http://www.spj.org/ethicsdearspj1.asp> ("Dateline finds itself in a financial arrangement with people [Perverted Justice] who are working directly with law enforcement for the apprehension and prosecution of individuals who are caught in a sting that is orchestrated by Dateline, PJ.com and local authorities."); Douglas McCollam, *supra* note 24 ("Dateline hasn't so much covered a story as created one. In the process it has further compromised the barrier between reporters and cops that is central to the mission of journalism."); Alessandra Stanley, *Gotcha! A Walk of Shame for Online Predators*, N.Y. TIMES, May 17, 2006, at E1 (writing that the show "was accused of checkbook journalism, which technically would be correct if the cheesy magazine program actually rose to the level of journalism").

<sup>33</sup> See Brian Stelter, *To Catch a Predator Falling Prey to Advertisers' Sensibilities*, N.Y. TIMES, Aug. 27, 2007, at C1 (noting that NBC had filmed seven episodes of the segment in 2006 but only one in 2007).

<sup>34</sup> *Id.* (noting that *Predator* was the most popular show on MSNBC in 2007).

A recently-settled lawsuit against the show gives a flavor of its controversial tactics. The lawsuit involved *To Catch a Predator*'s responsibility for the suicide of one of its targets, a prominent Texas district attorney named William Conradt, who had chatted online with a Perverted Justice decoy pretending to be a teenage boy. When Conradt decided not to meet the decoy at the designated sting house, the police, a horde of NBC cameramen, and a heavily armed S.W.A.T. team surrounded Conradt's home.<sup>35</sup> Observing the show of force and the cameras outside, Conradt shot himself dead inside his house.<sup>36</sup> A former district attorney in Texas said of the incident, "[t]hey murdered that man. That man is dead . . . merely because of the way it was handled."<sup>37</sup>

*To Catch a Predator* also had a powerful and direct impact on law. The spectacle the show presented—a seemingly endless supply of men desperate to prey on teens for sex—terrified parents<sup>38</sup> and became a catalyst for legislative action.<sup>39</sup> Some

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<sup>35</sup> *Conradt*, 536 F. Supp. 2d at 386. In *Conradt*, the deceased suspect's sister brought civil rights and state tort suits against NBC, alleging it was responsible for her brother's death and that it wrongfully persuaded police to arrest him in unnecessarily dramatic fashion for purpose of producing footage for reality TV show, with the result that his humiliation at prospect of being filmed caused him to commit suicide. Some have argued that prudent police practice would have dictated that police arrest the suspect at work at his government office. See, e.g., Luke Dittrich, *Tonight on Dateline This Man Will Die*, ESQUIRE, Sept. 2007, at 235.

<sup>36</sup> See Adam Cohen, Editorial, *What's on TV Tonight? Humiliation to the Point of Suicide*, N.Y. TIMES, Mar. 10, 2008, at A16.

<sup>37</sup> Baram, *supra* note 31.

<sup>38</sup> Anna Bahney, *Don't Talk to Invisible Strangers*, N.Y. TIMES, Mar. 9, 2006, at G2 (noting that the current "wave of parental concern [over the issue of teens and the internet] seems to have been largely spurred by *To Catch a Predator*").

<sup>39</sup> See, e.g., Laura M. Klever, *Reinvigorated Judicial Discretion After Booker: Burden or Boon to Sexual Exploitation Offenders?*, 11 J. GENDER RACE JUST. 93, 124 (2007); Mary B. Kibbler, *Fear Mongering, Filters, The Internet And The First Amendment: Why Congress Should Not Pass Legislation Similar To The Deleting Online Predators Act*, 13 ROGER WILLIAMS U. L. REV. 497, 527–28 (2008) (arguing that *To Catch a Predator* gives "continual visibility" to "remote threats" and drives "pressure on Congress" to produce legislation).

policymakers claim that the show's debut ushered in a radical change in the political and legislative climate.<sup>40</sup> A leading authority on online safety described *To Catch a Predator* as "the avalanche that has been driving all of us" since it began.<sup>41</sup>

Most prominently, *To Catch a Predator* directly influenced the passage of the Adam Walsh Child Protection and Safety Act of 2006, the legislation that dramatically stiffened the national requirements for tracking and registering predators.<sup>42</sup> Senator Bill Frist, one of the sponsors of the Act, described how the show motivated him to sponsor the legislation:

[The issue of child predation] didn't really hit, to be honest, until I saw *To Catch a Predator* . . . [A]ll of a sudden I started seeing these faces themselves, and I started relating it back to the fact that I'm a parent, and I've got three children. They've come up in this Internet age.<sup>43</sup>

Senator Frist made several references to *To Catch a Predator* during the Senate debate.<sup>44</sup> For example, the Senator remarked:

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<sup>40</sup> Bahney, *supra* note 38.

<sup>41</sup> PROGRESS AND FREEDOM FOUNDATION, *Online Child Safety, Privacy, and Free Speech: An Overview of Challenges in Congress and the States*, 16 PROGRESS POINT 20 (2009).

<sup>42</sup> See, e.g., Neal F. Wilson, *No Child Left Behind: The Adam Walsh Act And Pennsylvania Juvenile Sex*, 70 U. PITT. L. REV. 327 (2008) (describing Act as responding to "fever pitch" of parental concern surrounding *To Catch a Predator*).

<sup>43</sup> Klever, *supra* note 39, at 124. See also 152 CONG. REC. S1676 (daily ed. Mar. 3, 2006) (statement of Sen. Frist) (calling for the future consideration and passage of a Children's Safety Act and saying that "*To Catch a Predator* vividly demonstrated" that child predation is a bigger "real-world nightmare than at any time in the past").

<sup>44</sup> Many of his comments were directed toward the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Act. S. 1086, 109th Cong. (2006). This bill's provisions were later combined with those of a House bill to create the Adam Walsh Child Protection and Safety Act. See 152 CONG. REC. S8012 (daily ed. July 20, 2006) (statement of Sen. Frist) (discussing relationship between two acts).

"I followed a *Dateline* series, *To Catch a Predator*, over the last several weeks and months . . . . I think we have all been moved by this excellent investigative type of reporting."<sup>45</sup> He directly thanked the show's host, Chris Hansen, for his contributions to the legislation.<sup>46</sup> Republican Senator Orrin Hatch also invoked the show as he introduced the legislation that became the Adam Walsh Child Protection and Safety Act.<sup>47</sup> Once it was enacted, he thanked Perverted Justice for "directly impacting" the law's passage.<sup>48</sup>

The public fear that the show produced has also led to a flurry of legislative activity aimed at protecting youth online, such as age verification requirements for social networking sites, restrictions on social networking sites in publicly funded institutions such as schools, and expansion of COPPA, the Federal Children's Online Privacy Protection Act.<sup>49</sup> For example, the sponsor of the Deleting Online Predators Act of 2006 cited *To Catch a Predator* as "visual evidence" that online

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<sup>45</sup> 152 CONG. REC. S4089 (daily ed. May 4, 2006) (statement of Sen. Frist).

<sup>46</sup> "On 'Dateline NBC,' the producer, who has done a tremendous job, Chris Hansen, has been the face and voice in heading this show, 'To Catch a Predator'." 152 CONG. REC. S4090 (daily ed. May 4, 2006) (statement of Sen. Frist).

<sup>47</sup> 152 CONG. REC. S8012 (daily ed. July 20, 2006) (statement of Sen. Hatch) (invoking *To Catch a Predator* in introducing the bill).

<sup>48</sup> Vanessa Grigoriadis, *To Catch a Predator: The New American Witch Hunt for Dangerous Pedophiles*, ROLLING STONE, July 30, 2007.

<sup>49</sup> For a fuller discussion of these measures, see PROGRESS AND FREEDOM FOUNDATION, *Online Child Safety, Privacy, and Free Speech: An Overview of Challenges in Congress and the States*, 20 PROGRESS POINT 2 (2009).

predators posed a problem.<sup>50</sup>

The anxiety the show invoked also influenced child pornography law. Attorney General Alberto Gonzales cited statistics repeatedly provided by *To Catch a Predator* to justify the major new initiative he launched against child pornography in 2006.<sup>51</sup> The statistic Gonzales cited from the show—that at any time, 50,000 predators are lurking online waiting to molest children—turned out to be completely baseless, according to an FBI agent.<sup>52</sup>

Indeed, *To Catch a Predator's* impact on public policy raises a significant problem: the show appears to have distorted the public perception about the problem of child molestation. It gives the impression that online predation is a growing and overwhelming menace.<sup>53</sup> But this is actually not the case. The most recent and authoritative study commissioned by 49 state attorneys general and released in 2009 concluded that online sexual solicitation of children by adults, although a terrible

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<sup>50</sup> See 152 CONG. REC. H5886 (daily ed. July 26, 2006) (statement of Rep. Fitzpatrick); see also 152 CONG. REC. H5889 (daily ed. July 26, 2006) (statement of Rep. Jackson-Lee) (also citing *To Catch a Predator* to support the bill). Similarly, Representative Nicholas Lampson (TX) cited *To Catch a Predator* in explaining his support for a bill, Securing Adolescents from Exploitation Online Act of 2007, H.R. 3791, 110th Cong. (2007) (“Many of us have watched Dateline’s popular series *To Catch a Predator*, and organizations such as Perverted Justice that actively look for Internet child predators. We need to become partners in this fight by talking with our children about the dangers of strangers online and making Internet use a family activity.”); 153 CONG. REC. H14193 (daily ed. Dec. 5, 2007) (statement of Rep. Lampson); 153 CONG. REC. H6255–56 (daily ed. June 12, 2007) (statement of Rep. Stearns) (citing *To Catch a Predator* in his statement supporting the Resolution Supporting the Goals and Ideals of National Internet Safety Month).

<sup>51</sup> See Amy Adler, *All Porn All the Time*, 31 N.Y.U. REV. L. SOC. CHANGE 695, 699 n.22 (2007).

<sup>52</sup> The show had relied on a manufactured “goldilocks” figure “not small and not large” according to one FBI agent. See McCollam, *supra* note 24.

<sup>53</sup> *To Catch a Predator* gives the impression by constantly revisiting the issue “that this is sort of a growing trend or growing menace.” *Talk of the Nation: Ethics of NBC’s Sting Show “To Catch A Predator”* (NPR radio broadcast Jan. 16, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=6870926sc=emaf>.

crime when it occurs, occurs relatively rarely.<sup>54</sup> In fact, the number of teenagers receiving online solicitations actually declined between 2000 and 2006.<sup>55</sup> Furthermore, the show may also reinforce a particularly tenacious but misleading myth about the actual dangers facing children: the myth that the greatest threat to children comes from strangers when, in fact, the overwhelming amount of child sexual abuse is committed by a family member or close family friend.<sup>56</sup>

### III. Reading the Show as a Scene of Fantasy

The show is almost unbearable to watch—so deeply uncomfortable and disturbing, that even I, a seasoned scholar of child pornography law, find it painful to view. What, then, could explain the show's spectacular popular appeal? I want to take the show seriously not as law enforcement or public service but instead as a realm of entertainment, spectacle, pleasure and fantasy so powerful that it would influence our legal framework.

In *The Force Of Fantasy: Feminism, Mapplethorpe, and Discursive Excess*, Judith Butler discusses Laplanche and

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<sup>54</sup> BERKMAN CTR. FOR INTERNET SOC'Y AT HARVARD UNIV., ENHANCING CHILD SAFETY ONLINE TECHNOLOGIES: FINAL REPORT OF THE INTERNET SAFETY TECHNICAL TASK FORCE 15 (2008), available at [http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF\\_Final\\_Report.pdf](http://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/ISTTF_Final_Report.pdf) ("Youth identify most sexual solicitors as being other adolescents (48%; 43%) or young adults between the ages of 18 and 21 (20%; 30%), with few (only 4%; 9%) coming from older adults and the remaining being of unknown age . . . ." (internal citations omitted)). See also *id.* at 16 ("[T]he image presented by the media of an older male deceiving and preying on a young child does not paint an accurate picture of the nature of the majority of sexual solicitations and Internet-initiated offline encounters."); McCollam, *supra* note 24 ("The question is whether the level of coverage is proportional to the actual problem."); Janis Wolak, David Finkelhor, Kimberly Mitchell Michele Ybarra, *Online "Predators" and their Victims: Myths, Realities and Implications for Prevention and Treatment*, 63 AM. PSYCHOL. 111, 115 (2008) ("Internet-initiated sex crimes account for a salient but small proportion of statutory rape offenses and a relatively low number of the sexual offenses committed against minors overall.").

<sup>55</sup> Wolak et al., *supra* note 54.

<sup>56</sup> *Id.*

Pontalis' view of film as a *mise-en-scene* of fantasy.<sup>57</sup> Butler writes:

There is, then, strictly speaking, no subject who has a fantasy, but only fantasy as the scene of the subject's fragmentation and dissimulation; fantasy enacts a splitting or fragmentation, or perhaps better put, a multiplication or proliferation of identifications that puts the very locatability of identity into question.<sup>58</sup>

With this as a starting point, I read *To Catch a Predator* as a scene of pornographic fantasy that serves to multiply, proliferate, split, fragment and destabilize the category of the predator. I offer two different but related readings of the show's spectacular appeal.

#### A. Reading the Show As Disavowed Child Pornography

The prohibition does not seek the obliteration of prohibited desire; on the contrary, prohibition pursues the reproduction of prohibited desire and becomes itself intensified through the renunciations it

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<sup>57</sup> Jean Laplanche Jean-Bertrand Pontalis, *Fantasy and the Origins of Sexuality*, in FORMATIONS OF FANTASY 14, 26 (Victor Burgin et al. eds., 1986). Laplanche and Pontalis argue that:

Fantasy, however, is not the object of desire, but its setting. In fantasy the subject does not pursue the object or its sign: he appears caught up himself in the sequence of images. He forms no representation of the desired object, but is himself represented as participating in the scene although, in the earliest forms of fantasy, he cannot be assigned any fixed place in it . . . . As a result, the subject, although always present in the fantasy, may be so in a desubjectivized form, that is to say, in the very syntax of the sequence in question.

*Id.* See also Judith Butler, *The Force of Fantasy: Feminism, Mapplethorpe, and Discursive Excess*, in FEMINISM AND PORNOGRAPHY 487, 490–93 (Drucilla Cornell ed., 2000) (discussing Laplanche and Pontalis).

<sup>58</sup> Butler, *supra* note 57, at 492.

effects. . . . [T]he prohibition not only sustains, but is sustained by, the desire that it forces into renunciation.

—Judith Butler<sup>59</sup>

I have previously written about child pornography law as a realm of discourse that inadvertently replicates the sexualization of children that it fights.<sup>60</sup> I believe that *To Catch a Predator* not only repeats but also complicates that problem. The show offers yet another venue in which we are enthralled—anguished, enticed, bombarded—by the spectacle of the sexual child. It purports to be a public service, a crime fighting program that gets predators off the streets and stamps out the horror of child predation. Yet the show continually stages the spectacle of the sexual child that it disavows.<sup>61</sup> As Butler tells us, “[l]anguage that is compelled to repeat what it seeks to constrain invariably reproduces and restages the very speech that it seeks to shut down.”<sup>62</sup>

In my view, *To Catch a Predator* functions as a displaced and disavowed form of child pornography. To break down and castigate the predator, Hansen reads back to him his online pornographic chat. For example, when one predator proclaims his innocence, Hansen replies “But you said you couldn’t wait to pour chocolate syrup all over her and lick it off with your tongue.”<sup>63</sup> Or, to another predator: “You ask her if she’s

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<sup>59</sup> BUTLER, *supra* note 1 at 117 (emphasis added).

<sup>60</sup> See, e.g., Amy Adler, *The Perverse Law of Child Pornography*, *supra* note 9; Amy Adler, *Inverting the First Amendment*, *supra* note 11; see generally Jim Lewis, *Age of Innocence*, in MODERN ART CULTURE: A READER (Francis Frascina ed., 2008); Amy Adler, *Child Pornography*, in THE CHILD 763–64 (Richard A. Shweder ed., 2009).

<sup>61</sup> The repetition of the prohibition on pedophilic desire becomes a new displaced site of pleasure; as Butler has shown in other contexts, “the prohibition pursues the reproduction of prohibited desire”; it “sustains [and] is sustained by the desire that it forces into renunciation.” BUTLER, *supra* note 1, at 117.

<sup>62</sup> *Id.* at 129; see also *id.* at 117 (“[D]esire is never renounced, but becomes preserved and reasserted in the very structure of renunciation.”).

<sup>63</sup> McCollam, *supra* note 24.

horny? . . . You ask if she does anal. ” he quotes sternly.<sup>64</sup> Who is this man scornfully repeating the text of this chat and who are we the viewers, riveted, as the ratings tell us, by this retelling?

Consider this scene between Hansen and a predator called Robert. While Robert insists his online chat with an imaginary 13-year-old boy was just “rhetoric,” the avenging Hansen replies:

Rhetoric? I’ve got the transcripts of your conversation here . . . . What it sounds like, Robert, is that you wanted to . . . have [sex] with a 13-year-old boy. You said, “I want to see you and taste your beautiful body, make love to you. You are a gorgeous 13-year-old boy.”<sup>65</sup>

Safe within his disgust and contempt, Hansen luxuriates in the details of these imaginary sex scenes, conjuring up again and again another “beautiful” sexualized teenage body. And with righteous indignation, Hansen broadcasts these words to a national audience. Quoting the predator, Hansen reads, “It says here: . . . ‘We will be making love all the time . . . . With my tongue up your [bleep]’.”<sup>66</sup>

Nothing deters Hansen from doing his duty of conjuring up the gory details, not even a predator who says in effect “you’re right, I’m wrong, I confess, please arrest me right now and take me to jail.” There is no apparent reason to go on, yet Hansen persists, dragging up more sexual details of the chat. Oral sex,

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<sup>64</sup> *Ohio Sting*, *supra* note 18.

<sup>65</sup> *To Catch a Predator: February 2006 Florida Sting* [hereinafter *Florida Sting*] (NBC television broadcast, Mar. 6, 2007) available at <http://msnbc.msn.com/id/17491919/>.

<sup>66</sup> *Id.*

group sex,<sup>67</sup> SM,<sup>68</sup> Hansen soldiers on. “Please stop,” says the man. But Hansen can’t stop. Even when the man says, “I confess, I’m guilty, there’s nothing to dispute,” Hansen can’t stop. It’s the best part of the show.

In this way, *To Catch a Predator* fits within a long tradition in pornography: the exploitation film. As Eric Schaefer describes in his history of the exploitation film genre, risky pornographic films would come with an extra reel that offered a prefatory statement about the moral ill the film claimed to combat.<sup>69</sup> In that pornographic tradition, *To Catch a Predator* packages titillation as if it were a public service.

The repetition of the prohibition on pedophilic desire becomes a new, displaced site of pleasure. In psychoanalytic theory, a prohibition curiously can preserve rather than obliterate the desire it suppresses.<sup>70</sup> In fact, the pleasure of enforcing a prohibition may serve as a substitute for the satisfaction of violating it; this substitute becomes all the more pleasurable because it is experienced under the veil of condemnation. Many have observed the salaciousness of the censor; the leering, suggestive ebullience that can accompany a vigorous censorship

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<sup>67</sup> *To Catch a Predator: March 2007 Florida sting* (NBC television broadcast Mar. 6, 2007), available at <http://www.msnbc.msn.com/id/17491919/> (“[O]ne guy has his [bleep] in her mouth . . . the other guy has his [bleep] in her [bleep] or her [bleep].”).

<sup>68</sup> *Id.* (Hansen (reading) “I want to lay back on my back. I want to lay on my back with a pillow and let you sit on my chest with your knees over my forearms and punch me repeatedly.”); *Dateline NBC: March 2007 Flagler Beach Sting* (NBC television broadcast Mar. 6, 2007), available at <http://www.msnbc.msn.com/id/17491919/> [hereinafter Flagler Beach, Fla. Sting].

<sup>69</sup> ERIC SCHAEFER, BOLD! DARING! SHOCKING! TRUE!: A HISTORY OF EXPLOITATION FILMS, 1919-1959, 69-75 (2d Ed. 1999); see also Kathleen Karr, *The Long Square-Up: Exploitation Trends in the Silent Films*, 3 J. POPULAR FILM 108 (1974) (documenting the history of the square-up in silent film era).

<sup>70</sup> See SIGMUND FREUD, THE INTERPRETATION OF DREAMS 577 (James Strachey trans., 1913) (1900). See also GEORGES BATAILLE, EROTISM: DEATH AND SENSUALITY 36 (Mary Dalwood trans., 1986) (1967) (examining dialectic of transgression and taboo).

campaign.<sup>71</sup> As Butler has shown in other contexts, “the prohibition pursues the reproduction of prohibited desire.” It “sustains [and] is *sustained* by the desire that it forces into renunciation.”<sup>72</sup>

In this way, the show may be comparable to Foucault’s view of the power of eighteenth century sex manuals that warned parents of the dangers of childhood masturbation. As Foucault writes:

One might argue that the purpose of these discourses was precisely to prevent children from having a sexuality. But their *effect* was to din it into parents’ heads that their children’s sex constituted a fundamental problem . . . . [T]his had the consequence of sexually exciting the bodies of children while at the same time fixing the parental gaze and vigilance on the peril of infantile sexuality.<sup>73</sup>

Ultimately, *To Catch a Predator*’s restaging of the sexuality it condemns works to preserve, disseminate, and, in my view, even inadvertently normalize the predator’s sexual fantasies. After all, as the show’s spectacular ratings attest, it is no longer merely the “predator,” but we, the viewers of NBC, who gain some sort of disturbing satisfaction from these fantasy scenarios. Even though our pleasure is experienced through the veil of disgust and condemnation, doesn’t our experience of pleasure align us with the predator? His fantasy is no longer the stuff of furtive, clandestine chats. Now the “pervert’s” fantasy is mainstream entertainment, packaged for sweeps week, repeated again and again, long after it is useful or accurate, for a seemingly insatiable viewing audience. Transforming the “pervert’s” fantasy into mainstream entertainment, the show spreads and

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<sup>71</sup> See Adler, *supra* note 9, at 248–50.

<sup>72</sup> BUTLER, *supra* note 1, at 117.

<sup>73</sup> *Intervista a Miche Foucault* [Interview with Michel Foucault], MICROFISCA DEL POETERE [MICROPHYSICS OF POWER] (1977), reprinted in CONTEMPORARY SOCIOLOGICAL THEORY 204 (Craig J. Calhoun, Joseph Gertcis James Moody eds., 2007).

inadvertently normalizes the very imaginings it purports to condemn.<sup>74</sup>

## B. Reading Two: The SM Scene

The subject embrace[s] the very form of power . . . that threatens him and calls him into being .

—Judith Butler<sup>75</sup>

Here I want to read the text as a different kind of pornographic fantasy, not as a form of disavowed child pornography, but instead as an SM scene. I use Freud's essay, *A Child Is Being Beaten*, to approach this reading.<sup>76</sup> I have previously written about the significance of this essay to the crisis of child predation.<sup>77</sup> Here I want to sketch out its relevance to *To Catch a Predator* and particularly to the splitting and spreading of desire that I think the show accomplishes. Freud's text is particularly useful because it explores the complex and counterintuitive characteristics of fantasy and pleasure.

Freud begins the essay with this observation: "It is surprising how often people who seek analytic treatment confess

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<sup>74</sup> In this way, the show unwittingly participates in what I have called mainstream soft core child pornography—the cultural adulation of the teenager as sexual icon and the concomitant disavowal of that adulation. See Adler, *Inverting the First Amendment*, *supra* note 11.

<sup>75</sup> BUTLER, *THE PSYCHIC LIFE OF POWER* 9 (1997)

<sup>76</sup> SIGMUND FREUD, *A Child is Being Beaten: A Contribution to the Study of the Origin of Sexual Perversions*, in *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 175 (James Strachey trans., James Strachey et al. eds., Hogarth Press 1955) (1922) [hereinafter *A Child*]. I must note the significant complexity of the Freud text and, in particular, its gender complexity. As scholars have noted, *A Child is Being Beaten* is one of the few Freud texts to focus on female patients as a model for development. My analysis continues in the tradition of most classical scholarship about Freud's text by following his female model as primary. See, e.g., ETHEL SPECTOR PERSON, *ON FREUD'S "A CHILD IS BEING BEATEN"* (1997).

<sup>77</sup> See Adler, *supra* note 9.

to having indulged in the fantasy ‘A child is being beaten’.”<sup>78</sup> Who is this child being beaten? According to Freud, the fantasy goes through three distinct phases and the identity of the child shifts in each one. In the first, the patient imagines that her father is beating another child whom she hates. In the second, she imagines that her father is beating her. And in the third, she imagines that she is a spectator to a beating in which she no longer knows the participants.<sup>79</sup>

Freud’s essay, which highlights the voyeuristic role of the spectator and the shifting identity of the characters, bears relevance to *To Catch a Predator*. Below, I suggest how the SM of the show maps onto each of the three phases of the Freudian scenario.

### **1. Phase 1: Sadism in *A Child Is Being Beaten***

In the first phase of the fantasy, the Freudian subject describes her fantasy as follows: “My father is beating the child whom I hate.”<sup>80</sup>

The structure of this sadistic fantasy may also be found in *To Catch a Predator*. The obvious sadism of the show should have been apparent from my earlier description of it. As Judge Chin explained in a recent case, the “mainstay of [*To Catch a Predator*] is public humiliation.”<sup>81</sup> A television critic dubbed the series “humilitainment.”<sup>82</sup> The pure sadistic glee of the show is palpable as Chris Hansen metaphorically beats the predator into submission until the predator is left groveling on the floor begging stop, please stop. The cameras (Sontag’s guns) finish him off. The camera shot or money shot assures the predator’s complete debasement. He is now himself a victim of the

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<sup>78</sup> *A Child*, *supra* note 76, at 179.

<sup>79</sup> The fantasy is always accompanied by feelings of pleasure and leads to “masturbatory satisfaction” according to Freud. *Id.* at 175.

<sup>80</sup> *Id.* at 185.

<sup>81</sup> *Conradt*, 536 F. Supp. 2d, at 385.

<sup>82</sup> Deborah Potter, *Over the Line*, 29 AM. JOURNALISM REV., Aug.–Sept. 2007.

pornographic imagination, seeing himself being seen, objectified, caught and shot by the camera.

When the predator switches roles and becomes the prey in this humiliating scenario, I believe that he takes on the role of the child being beaten in the Freud narrative. Now he is an infantilized victim: helpless, abject, and caught. Remember that in this first sadistic phase of the fantasy, Freud tells us that this child being beaten is always someone whom we the onlookers hate. And of course we hate the predator. Whom could we possibly hate more than a child predator? As a group, child molesters are the most reviled people on earth.<sup>83</sup> Thus the pleasure of watching Hansen “beat” the predator: since the predator’s suffering is warranted, our sadistic urge feels justified.<sup>84</sup>

Furthermore, if the predator is the child whom we hate, then Chris Hansen is certainly the Daddy. As noted earlier, most predators believe Hansen is the decoy’s father. Looming over the predator, impossibly tall and white and stern, Chris Hansen has become the father beating the child whom we hate.

## 2. Phase Two: Masochism

The show’s sadistic appeal is patently obvious. Less easy to spot is the masochism in which I believe *Predator* also trades. This disguised masochism is consistent with phase two of Freud’s account in *A Child Is Being Beaten*.

Freud tells us that in this second phase of the fantasy’s development, the subject producing the fantasy would imagine

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<sup>83</sup> See, e.g., Mona Lynch, *Pedophiles and Cyber-Predators as Contaminating Forces: The Language of Disgust, Pollution, and Boundary Invasions in Federal Debates on Sex Offender Legislation*, 27 LAW SOC. INQUIRY 529 (2002); Adler, *supra* note 60.

<sup>84</sup> As a television critic writes of the pleasure of the show: “‘Predator’ is ratings gold, a jaw-dropping combination of public service and blood sport that lets viewers indulge their voyeurism righteously—like the Coliseum, if the lions were allowed to eat only the really, really evil Christians.” Poniewozik, *supra* note 25. See also Butler, *supra* note 1, at 114 (“It may well be more frightening to acknowledge an identification with the one who debases than with the one who is debased.”).

that the child being beaten is no longer another child whom she hates; now she *herself* is the child and her father is beating her.<sup>85</sup> Although “accompanied by a high degree of pleasure” according to Freud, this stage of the fantasy is always suppressed and never conscious.<sup>86</sup> As Freud writes, “This second phase is the most important and most momentous of all. But we may say of it that in a certain sense it never had a real existence. It is never remembered; it has never succeeded in becoming conscious. It is a construction of analysis . . . .”<sup>87</sup>

As in Freud’s account, the masochistic component of *To Catch a Predator* is also suppressed. The masochism manifests itself on two levels: that of the predator and that of the audience. First, the predator is often masochistic. Some predators collapse on the floor moaning, sobbing, and agreeing with Hansen’s furious accusations: “Wasn’t it wrong for a grown man to say this to a child?” says Hansen and the man obediently concurs, reveling in his wrongdoing. One predator, confronted by Hansen, says after a few minutes, “I need you to arrest me and take me to jail and execute me . . . .”<sup>88</sup> Another cries, “Can you shoot me, can you shoot me?”<sup>89</sup>

Indeed, Slavoj Žizek associates phase two of the beating fantasy with the death drive, writing about film that “our desire to annihilate the villain is already the desire of the villain

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<sup>85</sup> *A Child*, *supra* note 76, at 185. Note that there are significant contradictions between Freud’s account of masochism in this essay and in his later 1924 paper *The Economic Problem of Masochism*, which posited a primary masochism. See Jack Novick, Kerry Kelly Novick, *Not for Barbarians: An Appreciation of Freud’s A Child is Being Beaten*, in *PERSON*, *supra* note 76, at 31, 36–42 (elaborating differences between Freud’s varying theories of masochism).

<sup>86</sup> Žizek compares this stage to the Lacanian real. SLAVOJ ŽIZEK, *LOOKING AWRY: AN INTRODUCTION TO JACQUES LACAN THROUGH POPULAR CULTURE* 120 (1992).

<sup>87</sup> *A Child*, *supra* note 76.

<sup>88</sup> *Dateline NBC: To Catch a Predator III*, (NBC Television broadcast Feb. 3, 2006) [hereinafter *To Catch a Predator III*], available at <http://www.msnbc.msn.com/id/11152602/>.

<sup>89</sup> *Georgia Sting*, *supra* note 17.

himself.”<sup>90</sup> According to Žizek, the audience’s:

[S]adistic desire for the ‘villain’ to be killed is followed by a sudden awareness that it is actually the ‘villain’ himself who is in a stifled but nonetheless unequivocal way disgusted with his own corruption and wishes to be delivered from this unbearable pressure through his own punishment and death.<sup>91</sup>

A further indicator of the predators’ masochism arises from one of the most puzzling features of the show. The stings constantly net predators who are deeply familiar with the show, even to the point where they can recite Chris Hansen’s lines for him, as if they were engaging in a highly scripted, ritualized SM scene.<sup>92</sup> One predator caught by the show even came back for more: *To Catch a Predator* caught him in two separate stings.<sup>93</sup>

What should we make of this peculiar phenomenon--the predator who is also a fan? Chris Hansen comments frequently on this phenomenon of the predator/fan with disgust and disbelief, as if it demonstrates that nothing will stop these hardened criminals. I think this phenomenon suggests another possibility: that the series may be an incitement to would-be predators who masochistically desire to participate in the show’s

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<sup>90</sup> ŽIZEK, *supra* note 86, at 121.

<sup>91</sup> *Id.*

<sup>92</sup> See, e.g., *To Catch a Predator III*, *supra* note 88.

Hansen: Do you ever watch *Dateline NBC*?

Keith Williams: Ah, I’ve seen that . . .

Hansen: Well, I’m Chris Hansen. You saw the earlier episode.

Williams: Yes, I did.

Hansen: So let me get this straight. You saw our earlier story.

Williams: Right.

Hansen: You drove by this house and saw police out front.

Williams: Yeah.

Hansen: Yet you walked in here anyway.

<sup>93</sup> *Inside Dateline: A Repeat “Predator” in Our Eighth Investigation* (television broadcast Jan. 29, 2007), available at <http://insidedateline.msnbc.msn.com/archive/2007/01/29/44305.aspx>.

spectacle of crime and punishment. The predator as fan recalls for me Butler's description of the subject who passionately "embrace[s] the very form of power . . . that threatens him and calls him into being."<sup>94</sup> In other words, the show seems to be producing its own predators.

But could the masochism be not only the predator's but also our masochistic pleasure as viewers? I believe there is a masochistic component to our pleasure, but as in Freud's text, this masochism is repressed. It comes from two sources of suppressed identification with the predator. First, as described in my child pornography reading, the show pictures the enthralled viewer as strangely complicit with the predator; it imagines that we too will somehow delight, albeit under the veil of condemnation, in his fantasies. To the extent that we are complicit with the predator, his punishment is ours, and as we delight in his castigation, we masochistically revel in our own as well.

But our suppressed identification with the predator, and thus our masochistic pleasure in his punishment, also comes from another source. As the show stalks the predator, luring him to the sting house to be beaten by Chris Hansen, showing him caught and objectified by the pornographic gaze of the camera, the show turns the table. The predator is now prey and the show has become predatory. In fact, the show as predator got a little out of control. Some say it got blood on its hands, stalking a man until he killed himself. And as we as viewers delight in this reversal and enjoy watching the prey succumb, it gives us a taste of blood, a taste of pleasure and perhaps just a taste of perversity.<sup>95</sup> We are all predators now. Even though our predation compared to his feels justified, do we too deserve to be punished?

### 3. Phase 3: The SM of Spectatorship

Freud writes that in this final, conscious phase of the

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<sup>94</sup> BUTLER, *supra* note 75, at 20.

<sup>95</sup> *Cf. id.* at 45 (describing how the "sadistic pleasure involved in watching another becomes, in the mode of unhappiness, a displeasurcable watching of oneself").

fantasy, his patients would fantasize about a child being beaten by an authority figure of some kind, a father substitute.<sup>96</sup> But now the person producing the fantasy plays no obvious role in it. She is no longer the child as she was in phase two. The man administering the punishment is now no longer her father as he was in phases one and two. In fact, in this phase, she does not know either of the players in the scene. Now she is conveniently off-scene, a mere onlooker, bearing no responsibility for the sadomasochistic pleasure she has conjured up. She depersonalizes the fantasy, deepening her pleasure by disavowing her role in it or her authorship of it.<sup>97</sup> When Freud would press his patients to describe their role in this part of the fantasy, the most they could say was this: "A child is being beaten and I am probably looking on."<sup>98</sup>

Like Freud's patients, we the viewers of *To Catch a Predator* are also just "looking on." We luxuriate in the show's spectacular pains and pleasures while denying our desire, complicity, and shame.

### CONCLUSION

We can see that both "A Child Is Being Beaten" and *To Catch a Predator* become scenes of fantasy "that put the very locatability of identity into question."<sup>99</sup> The predator becomes the beaten child. The viewer becomes the predator, the victim, the father/policeman. We are beating and beaten.

I suggest that this fragmentation and proliferation of identification finds its structural double in the instability of the legal category of the "predator" and ultimately in the sexting cases, where the predator and the victim are one. And in the final

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<sup>96</sup> *A Child*, *supra* note 76, at 185–86.

<sup>97</sup> See Marcelo N. Vinar, *Construction of a Fantasy: Reading A Child Is Being Beaten*, in ON FREUD'S "A CHILD IS BEING BEATEN" 179, 188 (Ethel Spector Person ed., 1997) ("[T]he fantasizer . . . manufactures the fantasy in order to disclaim responsibility for his place in the scene even to the point of denying its authorship . . .").

<sup>98</sup> *A Child*, *supra* note 76, at 186.

<sup>99</sup> Butler, *supra* note 57, at 492.

analysis, our identification with the predator—and our concomitant desire, disgust and shame—lead us to disavow that identification through the force of an increasingly punitive and incoherent legal structure. Perhaps the simultaneous expansion and disintegration of the legal category of “predator” follows the logic of displaced fantasy and desire that animates *To Catch a Predator*—the very show that has had such a profound influence on law.