

A RESPONSE TO AUBREY BURRIS'S 'HELL HATH NO FURY
LIKE A WOMAN PORNED: REVENGE PORN AND THE NEED
FOR A FEDERAL NONCONSENSUAL PORNOGRAPHY
STATUTE'

*Teresa Drake**

In her thoughtful note,¹ Aubrey Burris notes that revenge porn is readily compared to sexual harassment, domestic violence, and cyber-rape.² Her note highlights that nonconsensual pornography fuels tactics of domestic abuse and sexual violence, creating an additional means of controlling and humiliating women in relationships.³ She argues that using intimate images as a means of controlling women's bodies, reputations and lives is just one of many destructive results that justify criminalizing such behavior. While her points are accurate, she skims over complexities of domestic violence when progressing to her argument that existing laws fail to adequately address the problem of revenge porn. As her broader analysis only briefly touches on the issues of domestic violence by use of revenge porn, my comments will add a few additional observations on why violence against revenge porn victims justifies swift action to criminalize such behavior.

While Ms. Burris's note devotes discussion to the fact that revenge porn is used as another means of domestic abuse, that discussion fails to explain just how this new tactic of abuse can destroy a victim's life and leave lasting effects similar to other forms of domestic violence. Domestic violence is not just about physical harm, it is about psychological harm through power and control.⁴ Domestic violence includes any behaviors that "intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone."⁵ The point of revenge porn is to humiliate, intimidate, frighten and dominate the victim. The behavior of posting nonconsensual pornography readily fits into several spokes on the Power and Control Wheel produced by the National Center for

* Co-founder & Director of the Intimate Partner Violence Assistance Clinic, University of Florida Levin College of Law; Associate Director, Center on Children and Families; Visiting Legal Skills Professor.

1. Aubrey Burris, Note, *Hell Hath No Fury Like a Woman Porned: Revenge Porn and the Need for a Federal Nonconsensual Pornography Statute*, 66. FLA. L. REV. 2325 (2014).

2. *Id.* at 2338.

3. *Id.*

4. *Domestic Violence*, DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN (July 23, 2014) ("We define domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.").

5. *Id.*

Domestic and Sexual Violence.⁶ Moreover, behaviors often considered sexual abuse in intimate relationships include “forcing or coercing one’s partner to engage in pornography.”⁷ Nonconsensual distribution of intimate private photos essentially forces the victim to engage in “pornography,” when the victim only intended to share private information in the context of an intimate relationship. Therefore, revenge porn can be both a form of sexual abuse, because it includes forced sexual exploitation, and also a form of emotional abuse, as it is used to humiliate and control one’s partner.

Revenge porn, like other tactics of domestic violence, robs victims of their fundamental right to maintain control over their own lives and bodies. Victims abused through such public forms of power and control live in fear and isolation, as their most intimate details exposed for the public to view and criticize. Even absent any physical abuse, emotional abuse through tactics like revenge porn produces significant negative consequences on victims’ health.⁸ In many ways, emotional abuse is more psychologically destructive than physical abuse.⁹ Generally, the emotionally abusive effects of revenge porn are so harmful because the exposure of the intimate details reoccurs every day that the photo is publically available and continues long after the photo is “taken down” from the internet. Along with this frequency of harm, emotional abuse is also considered so destructive because there is a greater likelihood that victims will blame themselves.¹⁰ When physical abuse happens (for example someone hitting their partner), it is generally easier to believe

6. The Power & Control Wheel is a diagram used to understand overall patterns of abusive and violent behavior used by abusers to establish and maintain control over their partners. Revenge porn could be employed as a tactic of threats, intimidation, or emotional abuse when photo postings often include derogatory comments to humiliate the victim. See National Center for Domestic and Sexual Violence, *Power and Control Wheel*, available at <http://www.ncdsv.org/images/powercontrolwheelnoshading.pdf> (last visited July 9, 2015).

7. *Revenge Porn*, STOP ABUSE CAMPAIGN, <http://stopabusecampaign.com/revenge-porn> (last visited July 9, 2015).

8. Peggy J. Wagner and Patrick F. Mongan, *Validating the Concept of Abuse: Women’s Perceptions of Defining Behaviors and the Effects of Emotional Abuse on Health Indicators*, 7 ARCH. FAM. MED. 25–29 (1998) (finding that emotionally abused women had significant differences in their health status when compared to non-abused women, including greater difficulty sleeping, difficulty losing weight, feeling tired, muscular tension, shakiness, and overall poor health in general); Joseph Pittman, *What’s Worse: Physical Scars or Mental Scars?*, DOMESTIC VIOLENCE STATISTICS (July 12, 2012), <http://domesticviolencestatistics.org/whats-worse-physical-scars-or-mental-scars> (“Psychological abuse of this sort can cause long-lasting damage . . . [and] can result in the development of disorders like post-traumatic stress disorder, panic disorder, anxiety disorders, and depression.”).

9. Steven Stosny, *Effects of Emotional Abuse: It Hurts When I Love*, PSYCHOLOGY TODAY (Aug. 26, 2008), <https://www.psychologytoday.com/blog/anger-in-the-age-entitlement/200808/effects-emotional-abuse-it-hurts-when-i-love>.

10. *Id.*

that the one hitting is the one responsible. However, when the abuse is more subtle—saying or implying that the person is “a slut”, ugly, a bad lover, stupid, or that no one could love them¹¹—the victim is more likely to think that it is *their* fault. Emotional abuse tactics like revenge porn are usually more personal than physical abuse because they are more about humiliating, hurting and controlling the victim as a person.¹² The psychological effects stemming from emotional abuse remain long after the emotionally abusive behavior has ended, often affecting a victim’s ability to fully engage in future relationships and may take years of therapy to return the victim to a healthy mental state.

Not only is revenge porn, like all forms of domestic abuse, devastating to the victim, but revenge porn is also harmful to society as a whole. Nonconsensual pornography harms society by undermining reasonable expectations of trust and privacy within relationships, which inherently changes interpersonal interactions and makes “intimacy difficult, if not impossible.”¹³ Failing to recognize the significant societal destruction caused by revenge porn and failing to criminalize such behavior encourages a spirit of “insensitivity and apathy as a norm, and to shun mutual respect and civility as core values. Inaction . . . reinforces a standard of conduct that would be intolerable in the physical world.”¹⁴ By allowing websites to function solely as avenues to harass, humiliate, demean, torment, control, abuse, and threaten individuals, we permit the existence of an avenue for domestic violence that surely threatens the moral fiber of our society. Moreover, despite disagreement over the moral state of our society, one cannot dispute that the economy is harmed when victims are forced out of the job market due to humiliation and an inability to remove photos from the public domain. Often, victims are left unemployed and with psychological issues, both of which are costly to society.¹⁵ Burris notes that almost half of revenge porn victims report contemplating suicide,¹⁶

11. As Burris points out, “the abuse [of revenge porn] is often very sexualized—threats of rape, false prostitution ads, calling victims ‘sluts’—even when the victim is a man.” Burris, *supra* note 1, at 2338 (quoting Lorelei Laird, *Striking Back at Revenge Porn*, A.B.A. J., Nov. 2013, at 47).

12. Stosny, *supra* note 9.

13. Adrienne N. Kitchen, Note, *The Need to Criminalize Revenge Porn: How A Law Protecting Victims Can Avoid Running Afoul of the First Amendment*, 90 CHI.-KENT L. REV. 247, 264 (2015) (quoting ELIZABETH ADJIN-TETTEY, SEXUAL WRONGDOING: DO THE REMEDIES REFLECT THE WRONG? in FEMINIST PERSPECTIVES ON TORT LAW 179, 181 (Janice Richardson & Ericka Rackley eds., 2012)).

14. *Id.* (quoting Nancy S. Kim, *Web Site Proprietorship and Online Harassment*, 2009 UTAH L. REV. 993, 1054).

15. *Id.*; JANICE RICHARDSON, IF I CANNOT HAVE HER EVERYBODY CAN: SEXUAL DISCLOSURE AND PRIVACY LAW, in FEMINIST PERSPECTIVES ON TORT LAW 145, 158–59 (Janice Richardson & Ericka Rackley eds., 2012).

16. Burris, *supra* note 1, at 2338.

which is not a shocking statistic in light of the report that one out of every four women who are the victims of domestic violence actually attempt suicide.¹⁷

It is clear that revenge porn is a form of stalking. As *Hell Hath No Fury* mentions, victims are frequently harassed, stalked, and threatened when anonymous users obtain personal information along with the intimate photos. Ms. Burris also suggests that Section 2261A of Title 18, a federal statute on stalking, could be amended to address the problem of revenge porn.¹⁸ I agree with Burris that an amended stalking statute must include self-shots and single images that were consensually shared within the reasonable expectations of privacy in the private relationship. However, amending the existing statute may be a pill easier to swallow for legislators than Burris's proposed criminal statute. Amending the stalking statute may also set precedent for states to include similar provisions in their statutes against stalking. Alternatively, the revenge porn problem could also be attacked in some situations at the state level by including an additional provision on final judgments of injunctions for protection against stalking. Though, Burris also explains at great length that civil actions are less preferred than criminal sanctions for reasons such as litigation costs, public record of the images, and other pitfalls. For example, if a victim petitioned for an injunction for protection against stalking after having been cyberstalked through revenge porn, nothing prohibits a judge from including a provision that forces the respondent to delete any information or copies of private pictures or videos relating to the petitioner. I have witnessed this scenario in cases we observed in domestic violence court, where respondents were ordered to send the clerk all personal information relating to the victim to be held by the clerk under seal and then destroyed.

Ms. Burris's note fails to suggest that, under her proposed statute, domestic violence counseling could—and should—be mandated for all perpetrators. Some states with revenge porn laws have already imposed abuse counseling along with revenge porn sentences. Take for example the case of Noe Iniguez, 36, who posted derogatory messages and nude photos on the public Facebook page of his ex-girlfriend's employer, using an alias to call her a “drunk” and a “slut” and encourage the company to fire her.¹⁹ A California court not only gave Iniguez a year in jail, but also sentenced him to three years probation and mandatory

17. Kevin Caruso, *Domestic Violence and Suicide*, SUICIDE.ORG, <http://www.suicide.org/domestic-violence-and-suicide.html> (last visited July 9, 2015).

18. Burris, *supra* note 1, at 2344 n. 107.

19. Alejandro Alba, *Los Angeles Man First in Jail Under California's Revenge Porn Law*, NY DAILY NEWS (Dec. 2, 2014), <http://www.nydailynews.com/news/crime/la-man-jail-california-revenge-porn-law-article-1.2030524>.

domestic violence counseling.²⁰ The sentence demonstrates an understanding that revenge porn is domestic violence, and should be taken just as seriously as physical abuse. In addition to mandatory domestic violence, the United States should follow the lead of the United Kingdom by requiring police and prosecutors to consider whether posting explicit pictures of a former partner in certain situations constitutes a form of domestic abuse, which likely leads to a harsher sentence.²¹ Criminal guidelines recently enacted in the U.K. urge police and prosecutors to take broader views of abuse, beyond a man being violent towards his wife or girlfriend, and to look for situations where abuse manifests itself in other ways, such as revenge porn and manipulation.²² The United States would benefit greatly by encouraging police and prosecutors to do the same.

Burris does an excellent job of pointing out the social stigma surrounding revenge porn.²³ However, there is often an even greater social stigma around domestic violence and sexual violence. Domestic and sexual abuse is an uncomfortable topic, forcing victims to often avoid talking about the issue altogether, unless they are prompted to talk about it or unless the culture encourages them to. We must recognize revenge porn as a legitimate and popular tool for domestic abuse, and must care equally for victims suffering from abuse, regardless of the tactics used. Enactment of a federal criminal law similar to Burris's proposal, along with the suggestions set forth in this response, will help lay the foundation necessary to address the revenge porn epidemic and finally provide much needed relief for so many abuse victims.

20. *Id.*

21. Martin Evans, *Revenge Porn Offenders to be Charged with Domestic Abuse*, TELEGRAPH (Dec. 29, 2014), <http://www.telegraph.co.uk/news/uknews/crime/11315610/Revenge-porn-offenders-to-be-charged-with-domestic-abuse.html>.

22. *Id.*

23. Burris, *supra* note 1, at 2332 n.29 and accompanying text.