

Incurable Sex Offenders, Lousy Judges & The Media: Moral Panic Sustenance in the Age of New Media

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Abstract There is consensus that since the 1990s, we have experienced a spike in public concern over sexual offenders. Analyzing this concern as a moral panic, this paper argues that national television coverage, as it picks up local news, adds heat to the fire by re-naming the villain as an inadequate judicial system. This process helps to sustain a moral panic, while narrowing the available discourse about the nature of appropriate punishment. Drawing upon a well-publicized example of a media event in Vermont, this paper extends the theory of moral panics to add another stage to the process—a stage presented by the advent of cable news programming, the relationship between local and national media, and the explosion of blogs. In order for a panic to sustain over an extended time period, the rhetoric about it must transform. In particular, the claimsmaking about the nature of the problem must evolve. In particular, the panic has evolved from sex offenders as folk devils to an attack on judicial discretion. The development of the outcry over judicial discretion was due, in part, to media distortion of the case. I will thus trace the trajectory of this one case to demonstrate the role of the media in shaping and sustaining the panic.

Keywords Moral panics · Mass media · Sex offenders · Criminal justice

Introduction

That we, as a society, are in an agitated state over the danger of sex offenders has been well documented (Critchler, 2002; Jenkins, 1998; Silverman and Wilson, 2002, Simon, 1997; See Cheit, 2003 for an alternate view). Whether or not this agitation constitutes a “moral panic” or not can be debated; a moral panic is generally conceived as a disproportionate public reaction to an event or group that poses a threat to the moral order (See Cohen, 1972). The general features of moral panics has generated some discussion in recent years, in an effort to establish a more cogent

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theory of the characteristics and progression of panics (Altheide, 2002; Cohen, 1972; Critcher, 2003, 2009; Garland, 2008; Goode & Ben-Yehuda, 1994; Hier, 2002, 2008; Jenkins 2009; McRobbie & Thornton, 1995; Rohloff & Wright 2010; Thompson, 1998; Victor, 1998; Young, 2009; Zgoba, 2004). Typically moral panics are explosive and then subside quickly as the mass media and the public turns their attention to other dangers. This paper seeks to extend the existing theory by explaining how the moral panic over sex offenders has been sustained over time.

Goode and Ben-Yehuda (1994) describe five features of a moral panic: concern, hostility, consensus, disproportionality, and volatility. Based on these attributes, the public attention to the issue of sex offenders would fit the criteria, with the possible exception of volatility. Public concern over sex offenders and the state's disposition of them has been in the news for more than a decade, as evidenced by media attention, blog activity, and legislation. This paper documents the extended public concern over sex offenders, arguing that the panic has been maintained by a shift in the rhetoric about the problem. In addition, this paper examines the mechanism by which the mass media has created consensus by narrowing the discourse about sex offenders. In this way, the paper addresses the volatility of the panic, as well as the concepts of hostility, consensus, and proportionality.

Critics of the moral panic concept argue, among other things, that Stanley Cohen's notion assumes too much about the disproportionality of the public reaction to a threat (see Jewkes, 2004). In other words, social scientists impose the term "moral panic" on events they deem out of proportion to reality, or irrational; in this way, the label has political undertones. In an attempt to operationalize disproportionality, Goode and Ben-Yehuda (1994) describe five aspects to it, including a reliance on distorted statistics; absent an objective measure of proportion, it is difficult to conclude when concern is out of proportion. This paper utilizes a case study analysis to document the process of distortion that feeds public concern and situates the case study within a larger context of media's role in perpetuating panics; in particular, the local case demonstrates how the panic evolved from characterizing sex offenders as "folk devils" to include an attack on judicial discretion. The development of the outcry over judicial discretion was due, in part, to distortion locally and nationally of cases such as the one described here. The public anxiety over sex offenders demonstrates two interesting features: there is tremendous consensus about sex offenders as "folk devils" in the public domain, as evidenced by the uniformity of the message coming from the mass media as well as citizen blogs.

This paper will demonstrate that public concern is shaped by mass media input, guided often by moral entrepreneurs. Thus, the trajectory of this one case reveals the role of the media in shaping and nourishing panic, and is instructive as an example of a process that may occur in similar conditions. In the final analysis, the panic over sex offenders is contextualized in a larger frame about risk obsession in the public imagination and its manifestation in crime policy.

Methods

Rohloff and Wright (2010) call for a marriage of theory and empiricism in moral panic research. In order to develop the theoretical model of sustained panics, a

qualitative content analysis was conducted, performing several database searches in order to analyze the content of reports. To analyze the local case, dozens of local newspaper stories were collected around the time of a highly publicized local event in 2006. In addition, the archives of “The O’Reilly Factor” television show transcripts and website postings about the Vermont case. Further data analysis might include comparison to other cases, but the aim was to utilize this one illustrative case as a model of the generic process of panic re-production in the media. In addition, looking at trends in news stories and blog entries addressing concepts related to sex offending, sentencing, and judicial discretion show a trajectory of increased chatter about these issues, reaching a crescendo in 2006; this was the same year as the Vermont case, and the passage of important federal legislation regarding sex offenses (emanating from more consequential and higher profile cases involving sex offenders).

Using an inductive approach, beginning with media coverage as the starting data point, a modified version of Altheide’s (1996) “tracking discourse” technique was used in conducting several searches. Among the searches were for the term “sex offender” in English language newspapers between 1989 and 2010, as well as a search within that term more narrowly for stories which discussed sex offenders’ sentences. The goal was to discover if a) the documented public concern over sex offenders was stable through the 2000s; b) the discourse may have evolved to include greater concern over sentencing. Figure 1 shows the change over time in use of the term “sex offender” in English language newspapers to demonstrate the increase in media attention to the subject. Figure 2 shows the increase in the number of stories that address the issue of sex offender sentences specifically.

Once the ebb and flow of news coverage about sex offender sentencing was determined, a close analysis was made of the 2006 watershed year in coverage about sex offenders. Within LexisNexis Academic, all stories about sex offender sentencing were searched in 2006 (English language news only) to discover the content of the stories. The content was coded into various conceptual categories (See Table 1). The analysis shows that stories about judges and the legal system made up a bulk of the content. As Altheide (1996:69) points out, analyzing the discursive framing of events

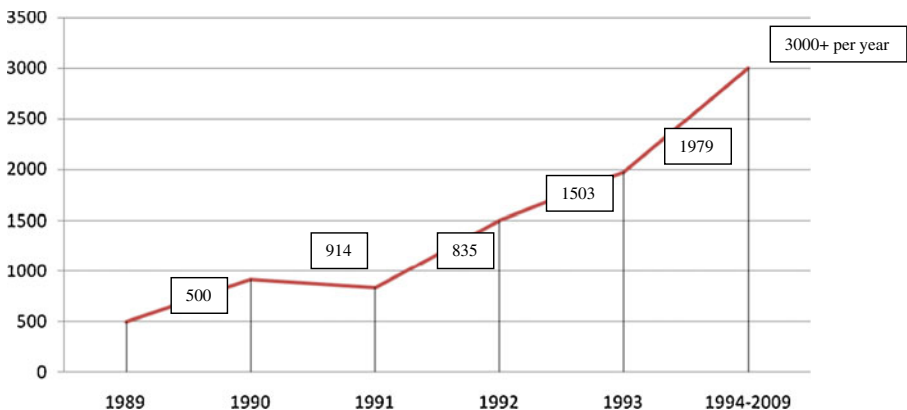


Fig. 1 Use of term “sex offender” in English-language news papers (January 1989–August 2010)

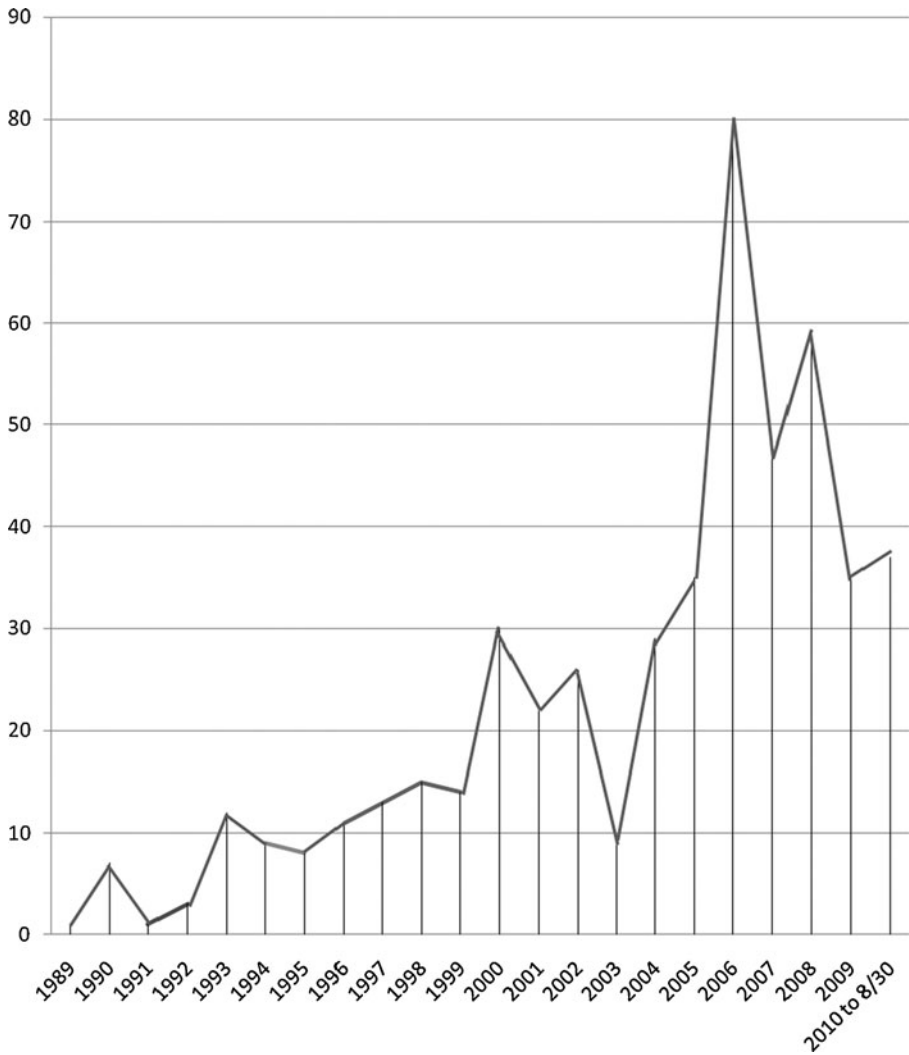


Fig. 2 Number of newspaper stories related to sex offender sentences (January 1989-August 2010) Source: Lexis/Nexis

Table 1 2006 newspaper coverage: “sex offender sentence”

71 entries *	
Legislation & system problems	17
Sex offender behavior	3
Reporting sentences/charges/civil commitment	16
Negative Editorial/opinion	4
Judges’ behavior	12
Inadequate sentences	19

* 9 omitted for duplication

reveals the taken-for-granted assumptions we make about the world. Showing the evolution of concepts and terms over time in a medium demonstrates the process by which discourses reproduce.

In searching the internet, using Google, for stories about the Vermont case, the connection between the content of local news coverage and national news coverage (WCAX television, Burlington) was discovered and found repeated in many blog entries on the subject. Within public blogs, searches were made for a particular phrase which appeared in the local news coverage (and later repeated by national outlets) to see if the blogs were echoing or contesting news interpretations; blog entries were coded based on the characterization the blogs used about the nature of the case. Only publicly available records and blog postings were used, and no site interaction occurred. Figure 3 demonstrates that where the phrase appears, it is mostly in blog entries that were critical of the judge in Vermont.

Figure 4 reveals that the number of blog entries related to sex offender sentences continued to grow beyond the 2006 climax in newspaper coverage on the issue; this suggests that the blogs reflect the consensus created by media coverage. In deconstructing the ways that the media framed the issue in this particular case, the goal is to extend the theoretical understanding of moral panics discourse that is enhanced by the relationship between the national and local media outlets and the blogosphere. This relationship is significant with the advent of 24-h cable programming, much of which focuses on public issues and sensational crime cases (Beale, 2006; Fox, Van Sickel, and Steiger, 2007). We might expect that public participation on the internet through blogs and commentary would engender a greater range of discourses about sex offenders, yet this appears to be at best modestly so. Based on a content analysis of the existing blog entries available, most blog treatments of the subject of this local case—rather than being sites of resistance—were mirror images of the prevailing ideologies endorsed by conservative cable news, contributing to the echo chamber of dominant discourse.

Constructing Incurable Sex Offenders

The notion that sex offenders and sexual offense laws have been variously constructed over time is not new (Critcher, 2003; Kitlinger, 2004; Jenkins, 1998;

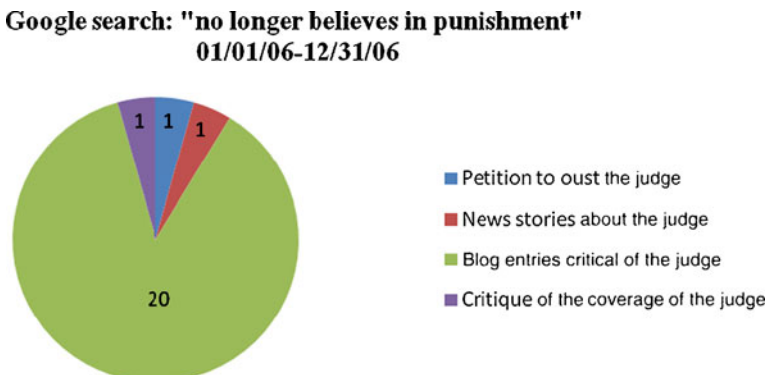
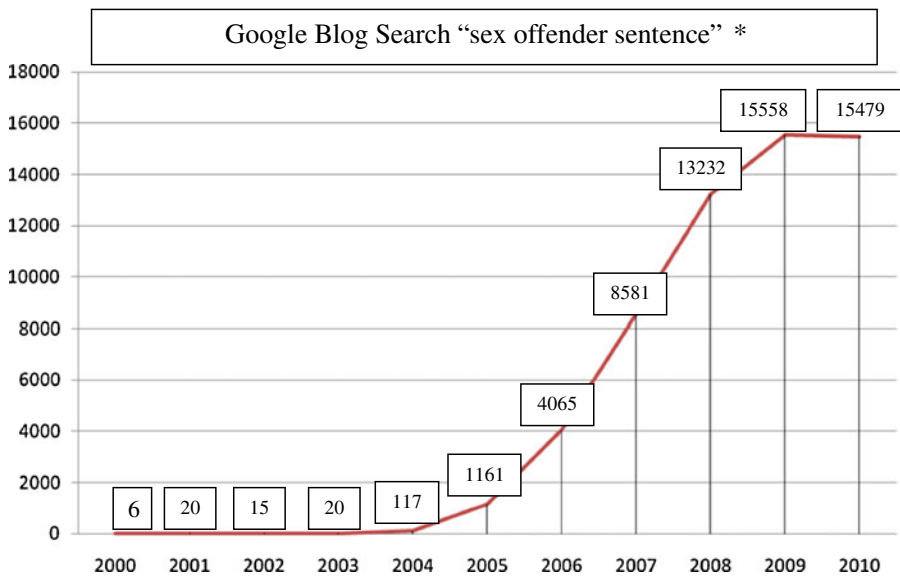


Fig. 3 Number of entries in 2006 with phrase "no longer believes in punishment". Source: Google search



* Google blog search mechanism begins in 2000

Fig. 4 Number of blog entries with phrase "sex offender sentence" 2000–2010. Source: Google blog search. (Google blog mechanism begins in 2000.)

Petrunik, 2002; Simon, 2000; Wilson, McWhinnie, Picheca, Pinzo, and Cortoni, 2007; Zgoba, 2004). Jenkins documents how in the United States, the panic over sex offenders—particularly strangers who prey on children—has ebbed and flowed over the last century. For example, at certain moments, sex offending has been characterized as a problem within families and at other times as being largely a stranger phenomenon (See also Critcher, 2003). According to Jenkins (1998: 49), in the 1930s through most of the 50s, sex offenders were seen as compulsive “sex psychopaths,” whereas in the “liberal” years of the 1970s, the risk was minimized somewhat and their offenses were treated more leniently. The public’s fear and unease about the risk of sexual offending against children and the law enforcement response to it has been heightened since the 1990s, and remains so. Jenkins (1998: 4) argues that behind all of these constructions, there are extra-scientific pressures, rather than the presentation of a “pristine objective reality.” As Jenkins (1998) described, what becomes orthodoxy in the public imagination may or may not be borne out by scientific or legal evidence. Although the panic over sex offenders tends to cycle, according to Jenkins (1998: 232), the most recent panic over sex offenders (as an effect of a child-protective culture) may be “permanent” in part because of the entrenchment of the child-welfare movement, health and mental health services, and the greater authority of women in the polity. These well-established interests shape our discourse about sexual offending.

Since Jenkins wrote his significant work on the subject, the landscape has shifted subtly. The perception that predatory strangers offending against children represent a large and serious problem is well established in the public consciousness (Cohen and Jeglic, 2007; Kitinger, 2004; Jenkins, 1998; Thompson,

1998; Victor, 1998; Zgoba, 2004). Thus, new spins on the nature of the sex offending problem need construction. Sex offending has been restructured again as an incurable compulsion requiring intense criminal justice. However, as the moral panic around sex offenders is sustained, the frame surrounding the nature of the problem has evolved to focus on the flawed legal system (Sasson, 1995). A construction of sex offenders as intractable leads to particular calls for action: public protection from predatory offenders, as well as suspicion toward rehabilitation (see Petrunik, 2002). The shift has focused to judicial discretion—lousy judges making poor decisions that heighten our risk.

Simon (2000: 1138) describes a social and legal context in which the citizenry is poised as either victims or potential victims, against a backdrop of “monsters” that represent an “intolerable risk.” Once the monsters are composed as sufficiently scary—and thus irredeemable—then the threat is seen as untenable and the panic gains momentum. Many cities have experienced similar events: a particularly disturbing and publicly galvanizing case mobilizes new calls for reform. In recent years, cable network programming has focused on violent crimes in particular (See Fox et al., 2007) and weaknesses in the judicial system. One accomplishment of this process is to highlight discrete and extreme local cases and translate them into national crises.

In addition to continued coverage of sex offending against children, the coverage in English-language newspapers about the topic of sex offenders has increased over time (See Fig. 1).

In addition, the number of stories about sex offender *sentences* reached a crescendo in 2006, the same year as the President signed the Adam Walsh Act, which regulated sex offender registration (and the same year as the highly-publicized Vermont case discussed below). Local cases may have received more publicity in light of the national attention to sex offenses generally. Although the number of stories about this narrow topic of sentencing is not enormous, the increase is dramatic and suggests a change in concerns.

According to the Crimes Against Children Research Center, based at the University of New Hampshire, rates of sexual offending against children declined 53% between 1990 and 2007 (Jones & Finkelhor, 2009). Sexual offending rates did not rise apparently, but the coverage of them did. In terms of the notion of proportionality, the rising media attention to sex offending was inconsistent with the amount of reported offending. However, the coverage could continue and increase if it were to shift focus; what was considered problematic about the issue of sex offending morphed into a secondary issue: the handling of cases.

In 2006, which is the watershed year in terms of newspaper coverage, there were 71 English-language newspaper stories about sex offender sentences. Of those stories, thirty-one were about inappropriate judicial behavior or short sentences. There were no stories that suggested sentences were too harsh, except for a couple of stories that reported legislators worrying aloud about the cost of longer sentences. Most of the stories concerning legislation referred to the need for toughening sentences (See Table 1).

Given the increased attention to sex offenders in the mainstream media and the change in focus toward the justice system—all within the context of a documented public anxiety—the emergence of more punitive sentiments and distrust of

rehabilitation is unsurprising. A high profile Vermont case is instructive in illuminating the process by which media interact to create punitive consensus.

Lousy Judges and System Failure

On January 4, 2006, a district court judge in Vermont, named Edward Cashman, gave a 60-day to 3 year prison sentence to a man (named Mark Hulett) who had sexually assaulted a 10 year old girl over a period of 4 years. The outcry was intense and the media coverage was significant (WCAX 2006a). The initial controversy was at the statehouse level and within the courthouse between prosecutors and the judge. The more public storm began on January 4, 2006 when the sentence was announced via the mass media. WCAX-TV in Burlington ran a story in which the newscaster, following a segment on the prosecutor's dismay, said:

“...But Judge Cashman explained that he is more concerned that Hulett receive sex offender treatment as rehabilitation. But under Department of Corrections classification, Hulett is considered a low-risk for re-offense so he does not qualify for in-prison treatment. So the judge sentenced him to just 60 days in prison and then Hulett must complete sex treatment when he gets out Since Hulett does not qualify for in-prison treatment, the judge sentenced him to 60 days in prison—and then Hulett must finish sex treatment once he gets out or face a possible life sentence. The judge also revealed that he once handed down stiff sentences when he first got on the bench—but *he no longer believes in punishment*” [emphasis added] (WCAX, 2006a).

In addition to concerns over the “leniency” of the sentence, this last statement characterizing the judge’s philosophy of punishment generated significant heat and outrage. Cheit (2003) found that, contrary to the assertion of “hysteria” over child molesters, newspapers tend to underreport short sentences; those data were well before 2006 however when stories about sex offender sentencing covered complaints over lenient terms. If Cheit’s claim is true generally, then the outcry over this case may be attributable to the imprecise accounting of the judge’s logic.

This one statement “no longer believes in punishment”—and its relationship to the ensuing firestorm—provides a prime example of Gitlin’s (1980) notion of media “frames.” Gitlin (1980:6–7) suggests:

Frames are principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters.

The little tacit theory cultivated in the newscast is that retribution (i.e. punishment for its own sake) is necessary. Moreover, the implication is that rehabilitation is in a zero-sum relationship to punishment. The local media repeatedly emphasized the 60-day sentence, when in fact, that reflected the minimum date at which he would be eligible for release. In addition, the sentence was “layered” with various checks and conditions that would allow for re-incarceration if Hulett slipped up.

The frame the reporter used, in this case, is what Sasson (1995:13) calls the “faulty system” frame. Specifically, Sasson (1995:31) breaks down the faulty system frame into two dimensions: “leniency” and “inefficiency.” Characterizing a judge’s

orientation as “lenient” allows for villainy to be reconstructed: bad situations are made worse by ineffective and soft judges who fail to restore and protect crime victims. This device has been used increasingly, and perhaps most emblematically with the Willie Horton case during the 1988 Presidential campaign (Sasson, 1995; Surette, 2007). Television ads portrayed a revolving door into prison, while Massachusetts Governor Dukakis’s lenient policies were blamed for the crimes that Horton committed during a weekend furlough. The consequence of the promotion and acceptance of this frame is that harsher policies, such as Three Strikes legislation after the infamous Polly Klaas murder, are supported and readily enacted in response (Anderson, 1995; See also Shichor & Sechrest, 1996).

The framing of the judge’s beliefs in this local example was the ignition for public involvement (Gitlin, 1980). Garland (2000: 350) describes how crime “policy measures are constructed in ways that privilege public opinion over the views of criminal justice experts and professional elites.” The governor and legislature became involved, and considered removing the judge from his duties. The Governor of Vermont, Jim Douglas, was quoted in the local newspaper saying “He needs to consider what he said and reflect on that and if that is truly his belief, I think that would be the appropriate decision [to resign]” (Burlington Free Press, January 13, 2006).

From the court transcript posted on the Burlington Free Press website, it appears that the judge never said he did not believe in punishment. He said: “And I keep telling prosecutors, and they won’t hear me, *that punishment is not enough* [emphasis added].” This statement showed that the judge was perhaps privileging rehabilitation over pure punishment, but not that he rejected the validity of punishment entirely. The national media picked up the wire story and did not cite the court transcript. WCAX news repeated the statement in subsequent broadcasts claiming that Judge Cashman no longer believed in punishment (WCAX 2006b).

As Wilson et al. (2007) have described, references in the popular media to sexual predators/offenders were scarce prior to the 1980s (See also Petrunik, 2002). Fear of sexual offenders has gained momentum since the early 1990s (Jenkins, 1998; Petrunik, 2002). As a result of the Polly Klaas murder in 1994, the state of California adopted Three Strikes legislation; it is safe to say that Sasson’s (1995) “faulty system” frame was used successfully in that case as well. In that case, and in the Willie Horton case, the revolving door of justice was to blame—in other words, the fact that the “system” was not equipped to hold known dangerous predators sufficiently (Anderson, 1995; Shichor & Sechrest, 1996).

In the Vermont example, the “system” was blamed for not holding this particular offender sufficiently long. However, the frame is a significant departure insofar as this particular offender was not a repeat offender and the offender was not a stranger to the victim; thus, the controversy was not about the ways in which repeat offenders continue to be released only to re-offend. Nonetheless, a lenient judicial system was deemed responsible; privileging rehabilitation over punishment was characterized as an irrational value that indicates the inefficiency of the system.

Another dimension to this faulty system frame was the role of the Department of Corrections for failing to provide sex offender treatment in prison to offenders who fit this offender’s profile—referring to the atrocity of his crime, not the likelihood he would commit another. According to Wilson et al. (2007), sex offenders who know the children they molest have lower recidivism rates than other kinds of offenders,

and among those who commit other types of sexual offending. Whether or not the public's passion over this particular sentence in Vermont was proportional, the offender had been deemed "low risk" by the Vermont Department of Corrections. Research shows that treating low-risk sex offenders can actually exacerbate their risk for re-offending (Gendreau, Little, and Goggin, 1996). The Department of Corrections reversed its position and agreed to provide sex offender treatment in prison to this offender and other low-risk offenders, but it was under tremendous pressure to do so. Interestingly, popular opinion does not reflect the scientific findings about treatment and risk; in fact, based on letters to the editor and comments on blogs, the vast majority of citizens who gave an opinion about treatability of sex offenders asserted that they are untreatable. A prosecutor appearing on the conservative quasi-news program, "The O'Reilly Factor," said: "With sex offenders it's not a question of if they're going to re-offend, but when" (O'Reilly Factor, 2005). It is no wonder the public called for harsher sentences and less emphasis on rehabilitation when experts state opinions that make re-offending seem inevitable (See Kitzinger, 2004).

The popular sentiments that retribution is essential, that sex offenders are incurable, and that lenient judges create more victims are given legitimacy in national tabloid media (See Surette, 2007). Thus the dominant media pronouncement about what was scandalous about this moment allowed for a reinvention of risk (Hier, 2002). According to Ungar (2001: 275), "fear of crime may be a relatively reassuring site for displacing the more uncertain and uncontrollable anxieties in a risk society." As such, the need for regulation and moral indignation surrounding it become paramount, even in light of counter-evidence.

Wither Punishment?

Although it began as a local television news station's *interpretation* of the judge's beliefs, the statement was repeated in print sources as a verbatim account of what the judge said (WCAX, 2006a). One can only imagine how the events would have unfolded if the first news piece on local nightly news had not characterized the judge's attitude as it did (See Hunter, 2006). The day after the sentencing, the local newspaper ran an editorial stating that the sex offender received "a slap on the wrist" and that he would be "free to walk the streets" in 60 days (Burlington Free Press, January 6, 2006a). Although an evaluative comment of this kind is appropriate for an editorial, the language was nonetheless inflammatory. As Tuchman (1978: 99) explains, news workers are not adept at distinguishing well between the facts and interpretation, or "news analysis."

In the month of January, 2006, the Burlington Free Press ran 12 front page stories about the sexual abuse, the judge, or the sentencing over a period of 3 weeks. In addition, the paper ran three editorials devoted to this issue, one calling for the judge to resign. Over the next several weeks after the sentencing hearing, there was a flurry of letters to the editor, press conferences at the Statehouse, and several airings on television programs such as "The O'Reilly Factor" on FOX News. Bill O'Reilly ran a silent video clip of Judge Cashman while saying "You may be looking at the worst judge in the USA" (FOX News, January 12, 2006). O'Reilly's

spotlight on judicial discretion served the function of “moral crusader” (Goode & Ben-Yehuda, 1994:20).

The editorials that followed and the subsequent letters to the editor in the Burlington Free Press tended to frame the judge rather than the defendant as the “villain” in the drama, although the response was not uniformly negative about his decision. Other newspapers around the state were more sympathetic (Graff, 2006; Hunter, 2006; See O’Reilly, 2006e) Young (2009: 4) refers to moral panics as indicative of “moral disturbance” due to “conflicts in values.” The conflict in the public was between those who value retribution over rehabilitation—a prime subject of debate within the American culture wars (See Garland, 2008). For example, in one letter to the editor, a citizen wrote:

Does he not read, not investigate the poor success rates of offender programs nationwide?...The Department of Corrections who states that Hulett is at low risk to perpetrate again and Judge Cashman who is worried about Hulett becoming hardened, don’t deserve the positions of authority they hold as they obviously haven’t bothered to educate themselves about sexual offenders and treatments options.

Another letter, which was less typical, said: “...the Judge Cashman case has suffered at the long hand of Republican-brand media and government.” Interestingly, the letter began by saying that the author had spent a week in Florida and ...

[met] a young (26-ish) Floridian couple who, upon hearing the word ‘Vermont’ in conversation said these sentences in succession: ‘Isn’t that the state that’s letting out all the sex offenders’ (plural)...?’

The letter writer continued that conservative “broadcasters (like FOX) are becoming successful at influencing regional people against other regions.” In other words, the state of Vermont becomes synonymous with liberal policies and inspired a letter “to the state” in response. One can infer that these result from national media coverage and supplications to respond. Indeed, rehabilitation becomes synonymous with liberal states, while punishment is equated with conservatives.

Moral (Crisis) Regulation

Stanley Cohen (1972) explained the latter stages of a moral panic as involving regulating or policing the “crisis” and stigmatizing the offenders (See also Hall, Critcher, Jefferson, Clarke, and Roberts, 1978). Who are the offenders in this case? Bill O’Reilly said: “Plenty of villains are surfacing in that terrible Vermont child rape case” (FOX News, January 19, 2006). He named “the Vermont print media” among them. He named a judge he believed to have the power to remove Judge Cashman as another “villain.” He said the Governor was in “hiding” and child advocacy groups were “mute.”

The judge bore the brunt of the ignominy insofar as there was a move in the legislature to oust him from the bench—it died out ultimately. Bill O’Reilly, on the O’Reilly Factor, said:

Now, we're looking for a hero in Vermont, a person who will lead a movement to right this incredible wrong. So far that hero has not appeared (FOX News, 2006c).

Many states have adopted stricter sentencing guidelines for sex offenders; Vermont was already crafting language in the legislature about this very issue prior to the sensational Judge Cashman case. Ironically, the statistics on child sexual abuse showed a decline over the past decade in Vermont (Fountain, 2006). Yet our cultural anxiety and despair over the risk posed by the sentence in this case seems, as Hall et al. (1978: 16) describe: "above and beyond that which a sober, realistic appraisal could sustain." In answer to why the public would be poised to act on this event, Garland (2000) would attribute several things. First of all, he points out the functions of our punitive attitudes of late and explains them as resulting from the decline in expert authority and the rising influence of popular sentiment in crime policy. He also declares the primacy of the victim in crime discourse as having an effect. Both of these processes converge in cable news programming. For example, there are a few programs which feature pundits, such as Nancy Grace, whose foundation is outrage over crimes and sentences. O'Reilly has been decrying judicial discretion for several years; in criticizing a Florida judge in 2005, he said:

The bottom line—children are dying all over the USA and judges are the last line of defense (O'Reilly, 2006d).

Later that same year, in his critique of "activist judges," O'Reilly said:

It's long past time for the press and the people to hold judges accountable for what they do. We have to take the country back (O'Reilly, 2006e).

In these examples, he effectively calls on the public to engage in crime policy activism, and targets judges for failing to protect victims.

The Link Between Media

The 24 hour news cycle has kept cable television busy in its search for stories to cover, thus, local legal issues can be picked up by national sources (Beale, 2006; Fox et al., 2007). In fact, Fox et al. (2007) argue that cable news programming covers more tabloid-type crime stories than other news outlets do, and that the "pundit/guest" format comprised of experts and opinionated hosts dominates the cable networks. They contend that only a few stories have pertinent policy ramifications, and the majority of them are sensationalistic accounts designed to draw higher ratings. Indeed, O'Reilly asserted about the Cashman case: "This was not a Vermont story, it's a national story" (O'Reilly, 2006d). In fact, it became a national story because of cable programming devotion to the issue and culminated in a Zogby International poll on the issue: 92% of the polled public disagreed with the judge's sentence; 60% believe sex offenders cannot be cured (8% believe they can and the rest are unsure); 66% believe that punishment should be the primary objective in a sentence (Zogby International, 2006). A national poll assumes that the public is familiar with this local case.

In a Google search of the phrase used by WCAX news: "no longer believes in punishment," thousands of entries appear. In a content analysis of the

entries that appear, the results demonstrate two things: first of all, some blog writers appeared to lift directly from the sole news source—a local story that was picked up by the national press (See Fig. 2). Secondly, of the blog entries, one was a critique of the media’s coverage and distortion of the judge’s words.

However, national coverage can, in turn, have a local effect. Or so it seems. After the Judge Cashman decision was covered on his program, Bill O’Reilly said of his program’s effect:

Cashman wanted rehab for the predator, *but after our reporting* (emphasis added), he had to up the sentence to 3 years—still far too lenient (FOX News, 16 January 2007).

In addition, on Bill O’Reilly’s website, it said:

Our *billoreilly.com* poll question asks if Judge Cashman is not removed from criminal cases, will you boycott Vermont?...Unfortunately, that’s what it might take—action by the rest of the country to wake the state up. (The O’Reilly Factor, 2006a).

Later on the website, Mr. O’Reilly maintained that his program was not calling for a boycott (The O’Reilly Factor, 2006b). However, some viewers interpreted the question posed to his audience as an invitation to boycott (Porter, 2006; see also Fox News, 2007).

Heinous cases have often received national attention, but this case was unusual insofar as Mr. O’Reilly suggested the state of Vermont would experience a negative financial impact unless it reversed its policies. In this sense, certainly the programming embraced an activist stance; whatever effect there may have been on the audience, it was intentional.

As Hall et al. (1978) explained, panics become a mechanism for inserting dominant ideology by making such perspectives appear as “common sense.” Panics over safety in childhood, in particular, can serve as a galvanizing force and are perhaps easier to sell as common sense than less universal going concerns (Best, 1990; Jenkins, 1998).

Fears and outrage have been heightened by sensational media coverage about the apparent risk of sexual predators (See Fox et al., 2007; Jenkins, 1998; Zgoba, 2004). Our cultural anxiety over the vulnerable status of childhood makes such a panic predictable and is reinforced by the media panic (Furedi, 2006; Simon, 2000). Once incorporated into our sense of risk and taken for granted as a clear and obvious threat, the panic must escalate beyond the fear of predators if it is to be sustained. In addition, the perceived risk posed is finely tuned by what is presented as near-lawlessness on the part of those entrusted to protect us from the dangers we face.

The Productivity of Moral Panics

Critcher (2003: 113) argues that the “discourse about paedophilia” serves to “[obscure] the family as a site of sexual violence.” So, too, does the emphasis on judicial discretion divert the attention away from the sexual offender or other problems to a

new enemy—the state in the courtroom. The very public national coverage of Vermont’s judiciary and alleged leniency with sex offenders served a function which may represent another stage in a moral panic. Although the conditions of possibility for thinking about sex offenders was fostered by the media, both locally and nationally, the national attention to the issue narrowed the possibilities of how we as citizens should think about, talk about, and act toward sex offending and its punishment. Stating a preference for rehabilitation as a justice ideal over retribution seems unspeakable. Moreover, Bill O’Reilly spoke about Vermont’s incorporation of restorative justice, saying “Vermont has become a secular progressive enclave—a state that believes in restorative justice, that is healing for the criminal as well as the victim” (FOX News, 16 January 2007). Daring to speak outside the parameters of acceptable rhetoric about punishment has consequences. Bill O’Reilly’s calls for action on the part of his audience demonstrate a newer phenomenon: the effect of national media on local politics, or what Garland (2008: 15) would call the “productivity” of moral panics.

The suggestion by Bill O’Reilly that some might choose to boycott Vermont may have effectively silenced other perspectives about appropriate judicial conduct. A lengthy excerpt from an exchange between Bill O’Reilly and a producer on the O’Reilly Factor program is instructive:

O’Reilly: ...What’s the reaction [to the sentence] in the hometown?

Watters: I was surprised by the reaction. You know, a lot of people are really uninformed about the whole story.

O’Reilly: Really?

Watters: Almost half the people I spoke to didn’t really know a lot of the details about the case. I would have to say, if I had to quantify, it would be about 70-30 people want the judge removed. And actually, people, you know, really are afraid that you’re going to boycott—or we’re going to lead this boycott of Vermont. They’re saying, you know, Vermont has good people here. It’s just the judicial system that’s screwed up.

O’Reilly: Yes, but the people haven’t risen up, have they?

Watters: No. No one has really risen up...But everybody seems really apathetic about it, and I was really surprised.

O’Reilly: I mean, that’s what’s stunning me. And the media in Vermont is actually, except for the Burlington paper, sticking up for the judge.

Watters: Yes. A lot of people are blaming the media for sensationalizing it and stuff like that...I talked to a lot of people today. They thought maybe punishment wasn’t a good idea. They blamed America’s repressed sexuality on some of these things that were happening.

O’Reilly: I mean, right. That’s the far left loons...(The O’Reilly Factor 2006c).

O’Reilly went on to say that they would continue their “investigation” and that “we need a hero in Vermont.”

There are several significant dimensions to the preceding exchange. First of all, the “tabloid justice” television programming epitomized by The O’Reilly Factor and Nancy Grace (both on FOX News) mimic some of the news format’s content and style, yet have little of the appearance of neutrality (e.g. “far left loons”). Statements of outrage substitute for statements of fact, yet supply us with the tone of common

sense and apparent wisdom. However, the exchange suggests that most people wanted the judge removed, without knowing many “details of the case.” In addition, although the program does not call for a boycott, the producer and star both hint at it, and mention that Vermonters are afraid of the prospect. Meanwhile, the host and producer lament that no one is “rising up.” The dialogue implies that if Vermonters want to avoid a boycott, they should protest the sentencing—this represents a veiled threat which could motivate some citizens to protest when they might be disinclined to. While impossible to determine the effect of O’Reilly’s call for action, there was a small protest in Vermont about 3 weeks after this program aired (Burlington Free Press, 2006a).

Mr. O’Reilly seemed distressed that only one local newspaper condemned the judge’s actions. A few other papers did examine the sentence but also included stories criticizing the media coverage and O’Reilly’s threats. For example, in one Vermont newspaper, an article began: “Another year, another national condemnation of Vermont by right-wing cable talk show host Bill O’Reilly” (Allen, 2007). In a piece a year prior, the same newspaper ran a story that began: “The transcript of a court hearing shows that Judge Edward Cashman never said he no longer believed in punishment, as some have suggested.” The author quotes Judge Cashman as saying “Our job is much harder than just retribution,” and asking the question “Why are you equating justice with lengthy incarceration?” (Graff, 2006). A Vermont senator wrote an editorial for the Boston Globe stating that WCAX’s claim that the judge no longer believes in punishment was “the lie that made it halfway around the world” (Illuzzi, 2006: A19). These examples show that the reaction to the judge’s actions were not uniform by the press, and also demonstrates McRobbie and Thornton’s (1995) assertion that there is indeed resistance to moral panics. Moreover, some media have co-opted the rhetoric of moral panic critiques and are disparaging of media distortion about events. Garland, too, sees the contested terrain of moral panics as skirmish sites in existing “culture wars” (2008: 17).

As McRobbie and Thornton (1995) describe, there is recognition by some citizens apparently that media tend to distort and that there are legitimate alternatives to pure punishment. However, O’Reilly and his producer use these suggestions as further evidence of how far we have strayed from common sense and good judgment. Even the resistance presented to this dominant characterization is subsumed into the discourse of “speakability” about punishment and sex offending. In this respect, the dominant discourse presented by pundits such as O’Reilly is evidence of “looping,” a process by which resistance is regarded as further support of the notion—in this case, that we have strayed from good judgment (Goffman, 1962). This process also demonstrates Foucault’s idea of discursive power, in other words, knowledge or truth is linked to power insofar as meaning exists in a discursive formation, which is difficult to contest and is reinforcing (Foucault, 1982).

The development of tabloid televisions’ crime-dominated themes, their need for local stories to highlight, and the rhetoric of outrage that floods the airwaves contribute to an assertion of common sense—about a world gone mad—and restrict the concepts used to discuss appropriate punishment. Whether or not Judge Cashman responded to O’Reilly’s negative characterizations is unclear, however, Mr. O’Reilly took credit for the decision to change the defendant’s sentence. If the viewing public believes in the impact of the O’Reilly Factor’s efforts, then, in a Foucauldian sense, the discourse can have a disciplinary effect (Foucault, 1979).

Blogs: Sites of Resistance or Echo Chamber

The internet as a free and open medium has been touted as a means for democratizing media by empowering ordinary citizens to weigh in and challenge dominant discourse (See Benkler, 2007; Boler, 2008; Jenkins, 2008; Sunstein, 2008). This cultural participation is presumed to lead to knowledge creation, specifically in the example of Wikipedia. Blogs may be written by experts, however, in most cases, the identity of the writer is unknown, as are their credentials. Maratea (2008) suggests the significance of blogs in the “claims-making” process about social problems but argues that bloggers still compete for attention like any other media outlets do.

In analyzing the content of blogs that still had content available from the 2006 Cashman case, the substance represented the “populism” Garland (2000:350) identified. Most bloggers expressed outrage rather than offering new factual information or resistance; in addition, they sometimes offered confident opinions about the futility of rehabilitation for sex offenders.

Figure 3 includes the yield from a Google search for the phrase “no longer believes in punishment” from 2006 through 2010. The majority of the entries were from blogs. Narrowing this search to 2006 demonstrates the proportion of entries which were blogs and which were negative; in fact, all of the blog entries on the subject were negative.

In fact, many blogs contained and referred to links from other broadcasts, such as O’Reilly’s or the Burlington station WCAX, as evidence for their positions. For example, in one blog entry, the blogger writes “Vermont is a state all too well known for its leniency when it comes to punishing sex offenders” and praises Bill O’Reilly for his crusade on the subject (American Sweetheart, 2008).

One way to assess the relationship—albeit imperfectly—between the outcry and the coverage is to analyze the content of blog entries about the judge. The number of blog entries related to this case numbered in the thousands in 2006 alone. A search among blogs for the term “no longer believes in punishment” yielded 84 results from 2006 to 2010 (See Fig. 3). Although the phrase appears in a fraction of the total blog entries, it appears in blogs more than in other sources. In searching 2006 for the phrase originally used in local reporting, it appears in 23 entries, most of which were negative blog entries.

A couple of articles contested the firestorm, for example, criticizing inaccurate reporting on the case (Hunter, 2006). The article corrects the often repeated claim that the judge sentenced Hulett to 60 days in prison; the original term was 60 days to 10 years. A couple of blog entries refer to these inaccuracies. In this regard, some blogs do represent a way to talk back to the dominant discourse. The vast majority of anonymous comments posted on the blog sites say inflammatory things, such as “He no longer believes in punishment! What?!” (Largebill Pontificates, 2006). The blogger quotes the story verbatim from the WCAX transcript about the sentencing hearing. There were dozens of comments registering alarm, one suggesting that the judge was a closet pedophile, another suggesting that pedophiles will move to Vermont, another posting the judge’s contact information, as well as the Governor’s, and another saying that the judge should be removed to protect Vermonters and visitors to the state. The significance of these blog entries is that they demonstrate the effect that the mainstream media have in shaping public opinion. Generally, these blogs did not represent dissent or challenges to the media representation; rather they reinforced and

circulated the dominant, accessible point of view. Blogs reflect consensus (and may possibly contribute to it as well)—Beale (2006) argues that the economic impetus behind 24 hour news cycles has led to more punitive crime policies.

A Gallup Poll conducted in 2005 about sex offenders established some surprising findings: 65% believed that rehabilitation was not possible for sex offenders, and 66% believed that it was somewhat likely or very likely that a convicted sex offender lived in their neighborhood (Gallup, 2005a). Given this, it is not surprising that 66% said they were “very concerned” about the sexual molestation of children (Gallup, 2005b). While we cannot determine the relationship between media coverage and this heightened concern, nor the link to the blog entries, we can see a connection between the increase in coverage and high levels of concern. Unfortunately, the Gallup Poll did not ask about sex offenders prior to 2005. However, if we compare Fig. 2 with Fig. 4, we can see that *newspaper coverage* of sex offender sentences hit a peak in 2005–2006 and has been declining since. Yet the number of *blog entries* related to this subject has been increasing dramatically—particularly with respect to sentencing. This could be a function of sheer volume due to an explosion in the number of blogs, however, that the topic remains vital suggests that coverage creates consensus and has allowed the panic to morph and therefore sustain.

The outcry over this case expressed in blogs (and in newspapers) may have been simply a reflection of consensus about the inadequacy of the sentence. In other words, it could be legitimate outrage about an outrageous case. What is significant is the role the mass media play in the *expansion* of sex offending and sentencing on the moral stage. Upon examination of the content of the rhetoric, however, what seems apparent is that the mainstream media’s representation of the case conditioned the possible responses. In other words, had the judge’s reasoning been reported and explained in the media, would the outcry have been tempered somewhat, even if the public believed the sentence was too short?

Conclusion

This paper has framed the issue of sex offending in its current context by highlighting a specific case which clearly represents—fairly specifically—what Stanley Cohen (1972) suggested about the media’s role in creating panics. However, this analysis sought to go beyond the existing literature on the importance of media to explain the process by which a panic can be sustained over time, incorporating the impact of the 24 hour news cycle, as well as the proliferation of blogs (Beale, 2006). The inaccurate language that the newscasters and editors use sets the tone and the agenda for the public. The intensity of the coverage also served to tell audiences what they should be thinking about. Fox et al. (2007:202) infer an effect from “tabloid” crime stories, which are abundant on cable television; they found that public “confidence” in the criminal justice system was undermined by the content of television coverage of legal issues (2007: 202). Critcher asserts bluntly: “Moral panics distort our capacity for understanding, even when they appear to recognize a genuine problem” (Critcher, 2003: 117). Beale (2006: 397) argues that the economic needs of news organizations has an effect on crime policy and “promote punitiveness” (see also Griffin and Miller, 2008).

The Vermont case represents an important model of how media distortion can create new villains, perpetuate inaccuracies across media formats, and change the face of “risk” and anxiety. In a “risk society,” offenders are treated in terms of their possibility for re-offense; governance is about enhancing security and reducing the peril of victimization (see also Adams, Ulrich, and Van Loon, 2000; Beck, 2008; Douglas and Wildavsky, 1982; Gardner 2009; Garland, 2000; Giddens, 2002; Hier, 2002, 2008; Simon, 2007; Ungar, 2001). The media coverage served to reinscribe a societal shift in the construction of risk anxiety—to one that focused on the state’s inability or unwillingness to protect us adequately from a menace that we can scarcely control. This shift in focus enables the continuation of a panic and also fulfills the market needs of news programs.

Public outrage can be evaluated as a response to a collective feeling that the public has a better idea of how to punish than government officials seem to have (see Garland, 2000). This populist move toward weighing in on issues through the use of blogs and the like would be more fruitful if the public had access to accurate information. The media volume on the issue and the interaction at various levels narrowed the discursive possibilities about appropriate treatment of offenders; this sustains abiding moral panics by creating consensus. In spite of the optimism about the potential of blogs as a democratizing force, they do not appear to broaden the scope of what is speakable about sex offender sentences. Perhaps there is simply genuine consensus about sex offenders as reflected in blogs, but their appropriation of mainstream news information in the content of their entries suggests that the discursive possibilities have been limited because information about crimes and their punishment comes from a restricted range of often morally-charged sources. Blogs may be more subversive in response to other topics, however, in this example, the evidence suggests that crime and punishment engender a limited scope of how subjects are framed. Rather than offering a challenge to the claims-making in moral panics, new media forms appear to reflect and reinscribe the panic.

Brown, Deakin, and Spencer, (2008) state that governments tend to be responsive to media coverage of their approaches. Insofar as governments adopt the popular sentiment (rather than evidence-based policy), the power to govern flows through a variety of institutions—the mass media, the legislature, and the courts (see also Beale, 2006; Garland, 2000). With a web of institutions engaging similar rhetoric, and responding to representations of the issue, the effect is a contraction of the possible ways of making claims about the nature of the problem. According to Brown et al.:

So, the government is not able to promote a ‘low-key’ approach to the management of sex offenders in the community, as reoffending, especially if it is serious and newsworthy, is liable to indicate government incompetence (2008: 272).

The larger context for understanding the energy of what I’ve described is what Simon (2007) termed “governing through crime.” The prominence of crime in the public imagination leads to “new opportunities for governance” (Simon, 2007: 5). Simon argues that we are encouraged to situate ourselves as subjects as either potential victims or targeted as perpetrators—either way, we are ever in relationship to crime and its potential risks. This “feared future” position “produces subjects who are likely to

place large demands on governance at all institutional levels” (Simon, 2007: 279). We see the result of the loop that appears between local media coverage (some of which may be distorted) and the calls for government and citizen action that are taken up by national media in an era of “tabloid justice” (Fox et al., 2007), enabling the continued sustenance of a moral panic. As Simon argues, these demands on governance and for governance regulate the kinds of responses that are deemed appropriate (See also Young, 2009). The apparent viable forms of crime control policy are delimited by the discursive production and reproduction that occurs with media distortion (see Beale, 2006). Ultimately this kind of dynamic sculpts the contours of the public imagination deeply into a risk-centric one, which has consequences of its own.

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