

Review of: **Sext Ed Obscenity versus Free Speech in Our Schools**

By Joseph O. Oluwole and Preston C. Green III with the assistance of Melissa Stackpole

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“Nationally, 20,209 texts are sent out every second by teenagers, and each teenager sends out a text on average, every 14 minutes.”¹

Almost every student has a cellphone to which they use to text their friends, post on social media, and essentially access the world. In *Sext Ed: Obscenity versus Free Speech in Our School*, authors Joseph O. Oluwole, Preston C. Green III, and with the assistance of Melissa Stackpole embark on an adventure to understand why teens sext, how often they sext, how laws regarding child pornography apply to students, and how the Freedom of Speech tie into the rights of students in regards to texting and sexting.² Oluwole and the others suggest that students should not necessarily be subject to the same child pornography laws when they are consenting to sexting and go as far as to suggest that subjecting children to child pornography laws when they participate consensually, is a violation of the Constitution.

¹ See JOSEPH O. OLUWOLE ET AL., *SEXT ED: OBSCENITY VERSUS FREE SPEECH IN OUR SCHOOLS* 1 (ABC-CLIO, LLC 2013).

² See OLUWOLE, *supra* note 1, at 7.

The authors are more than qualified in the legal and educational studies. Mr. Oluwole has both a PhD and a J.D., and teaches education law at Montclair State University. Mr. Oluwole received his PhD from Pennsylvania State University, his J.D. from Ohio State University, and his B.A. from Michigan State University. He is a license attorney in Ohio and has served as a state attorney general. Mr. Oluwole has published many works regarding education and the law that affects it. Mr. Oluwole is a member of the American Educational Research Association, the Education Law Association, and the University Council for Educational Administration at Montclair University. Further, Mr. Green also has a Ed.D., J.D., and teaches Educational Leadership Law at the University of Connecticut. Mr. Green received his Ed.D. from Columbia University, his J.D. from Columbia, and his B.A. from University of Virginia. Mr. Green has taught educational law and wrote various books and articles surround education, law, and educational policy. Both authors are very well qualified to discuss students rights and the law.

The book takes on the difficult, but real topic of sexting among teenagers in our schools. The book is broken down into seven chapters and two appendixes. The chapters slowly begin as an introduction into the world of teen texting and sexting and move toward how teens are being subjected to child pornography laws after sending sexts and ending with an analysis of whether such behavior should be treated the same as adults who exploit children. The two appendixes are split between statutes regulating behavior like sexting and the range of punishments for Felonies and Misdemeanors. Ultimately, the book moves from an explanatory tone toward and argumentative tone.

The authors begin the book by introducing statistics regarding teen texting and instant messaging. The authors define sexting as “youth writing sexually explicit messages, taking

sexually explicit photos of themselves or others in their peer group, and transmitting those photos and/or messages to their peers.”³ Further, the introductory chapter discusses that even when teens can have consensual sex, they still can find themselves in legal trouble for sexting.⁴ The authors set an informatory tone with an underlying warning tone for teens and parents.

The authors then move on from a brief introduction of sexting onto a more in-depth look as to why teens feel sexting is fine. Chapter 2 begins by laying out statistics that demonstrate teens find sexting as a safer alternative as well as a precursor to actually having sex.⁵ This half of chapter seems to target parents more than teens because parents and adults do not necessarily understand why teens act the way they do. The second half of Chapter 2 demonstrates how sending a simple nude picture to a boyfriend or girlfriend could cause a teen to become a registered sex offender under current laws, even if they could legally consent to sex.⁶ The authors are warning teens and parents through the stories of other teens who have been charged and in some cases convicted under child pornography laws for sending sexts regardless of the state’s age of consent laws. The entire chapter appears to educate parents regarding reasons why teens sext and warns teens the risk they take when they sext.

Chapter 3 shift to discussing federal and state child pornography statutes used in prosecuting teens who sext. In the first half of Chapter 3 the authors focus on the Child Pornography Prevention Act (“CPPA”) and *United States v. Dost*.⁷ The authors specifically articulate that teens are being prosecuted for sext under both CPPA and *Dost* even though those laws are meant to protect them from exploitation.⁸ This chapter really seems to shift toward

³ See OLUWOLE, *supra* note 1, at 4.

⁴ See OLUWOLE, *supra* note 1, at 4.

⁵ See OLUWOLE, *supra* note 1, at 9-11.

⁶ See OLUWOLE, *supra* note 1, at 15

⁷ See OLUWOLE, *supra* note 1, at 19-23

⁸ See OLUWOLE, *supra* note 1, at 20.

argumentative tone with an underlying tone of warning. At this point, the book appears to be taking on a legal analysis rather than simple warning. The second half of chapter 3 briefly discusses state child pornography laws. The authors point out that states vary on their wording, but make sexting even making it a felony in some cases. The book at this point has transitioned toward more of a legal analysis rather than the authors attempting to warn teens and parents.

The next two chapters, chapter 4 and chapter 5, discuss relevant case law regarding obscenity and child pornography. In chapter 4, the authors discuss obscenity limitations and protection under the First Amendment and at the end of the chapter; the authors suggest that the Supreme Court needs to update the obscenity test to include teens' sexts.⁹ With the beginning of the book appearing to be a warning tone and the second half being a legal analysis, the book really transitions from being for teens and parents to maybe being a guide for legal professionals as well. This point is further proved in chapter 5 when the authors then outline the relevant case law regarding child pornography. The authors discuss how child pornography laws are supposed to protect children and the court should look at cases of teens sexting on a fact by fact basis and in a sense realize that teens are not doing it to exploit children.¹⁰ The authors even suggest that the Supreme Court should consider applying their rule regarding adults who look like minors as protected speech to consensual sexting among teens.¹¹ This chapter really demonstrates the authors' position on consensual sexting among teens as well as justifying it with legal precedent. While this chapter can help teens and parents, it also can aid legal professionals representing teens who may be facing criminal charges for sexting. Ultimately, chapters 4 and 5 really lay out the legal framework for the authors' position.

⁹ See OLUWOLE, *supra* note 1, at 25-49.

¹⁰ See OLUWOLE, *supra* note 1, at 51-52.

¹¹ See OLUWOLE, *supra* note 1, at 65-69.

The book in chapter 6 takes a turn toward what power schools have in regulating student First Amendment Rights. The authors begin chapter 6 with statistics regarding texting and phone usage in school, specifically what is prohibited.¹² Then the authors switch back to a legal analysis with key cases regarding a school's right to limit student First Amendment Rights.¹³ This chapter is rather informative for teens, parents, and even legal professionals are given a look into the power schools have to limit students' rights and even to punish them for speech and conduct. Basically, the chapter is informative and interesting for teens, parents, and legal professionals.

Essentially, chapter 7 is the authors' conclusion to the book. The chapter reiterates the authors' argument that consensual sexting between teens should not be considered the same as child pornography.¹⁴ The chapter is informative, persuasive, and conclusive. The authors even go so far as to address counter-arguments in regards to their position.¹⁵ The counter arguments are helpful because they allow readers to get a full picture of the situation and various opinions. Ultimately, this chapter wraps up the authors' key points and even demonstrates some important counter-arguments.

The appendices, Appendix A and Appendix B, outline state laws that can apply to teens who sext as well as the potential felonies and misdemeanor punishments they face. In Appendix A the authors thoroughly outline state statutes regarding teens sexting.¹⁶ The comprehensive list allows teens, parents, and legal professionals look for state specific law. While the list is expansive, there are notes by the author clarifying things like where the charges will be brought. In Appendix B the authors outline felony and misdemeanor punishments teens who sext could

¹² See OLUWOLE, *supra* note 1, at 71-74.

¹³ See OLUWOLE, *supra* note 1, at 74-91.

¹⁴ See OLUWOLE, *supra* note 1, at 95-96.

¹⁵ See OLUWOLE, *supra* note 1, at 111.

¹⁶ See OLUWOLE, *supra* note 1, at 117.

face just for sending or receiving a sext.¹⁷ This section allows teens, parents, and legal professionals to see what form of punishments teens could face just for sexting, sometimes being as serious as a felony conviction. The section is comprehensive and thoroughly outlines what each state considers to be a felony and misdemeanor as well as their subsequent potential prison sentences. In the end, the appendices allow teens, parents, and legal profession access to the laws relevant to sexting.

The authors goal was to deliver a book that gave the average person and legal professionals a guide to understanding the controversial issue of teens sexting. The authors gave a comprehensive explanation of not only why teens are sexting at what seems to be alarming rates, but also the laws and punishments teens could face. Teens, parents, and even legal professionals could easily read the book because the authors' framed the booked and their writing in a manner that pretty much anyone could understand. Overall, the book achieves the authors' goal of being informative and persuasive.

¹⁷ See OLUWOLE, *supra* note 1, at 273.