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## CHAPTER 3

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# Sex Offender Panic

In a series published in *Slate* in 2014 about the problems with sex offender legislation, Yale Law School student Chanakya Sethi notes that at least 12 states require registration for urinating in public—and at least 29 states require sex offender registration for consensual sex between teenagers and at least 6 require registration for prostitution-related offenses.<sup>1</sup> This chapter seeks to explore how sex offender laws, and registries in particular, not only fail to increase public safety but also harm both children and adults, partially by encouraging all of us to be more fearful and neurotic (leading to, among other consequences, our increasing restriction on all children’s activities), but also, more directly, because over one-third of sex offenders are (as documented in the Human Rights Watch report, *Raised on the Registry*) children themselves.<sup>2</sup> As absurd as it seems, children who commit sex offenses can find themselves placed in the category of pariahs and outsiders, possibly even for life.

### Stranger Danger, Daycare Panic, Victims’ Rights

Our current sex offender laws emerged out of a panic driven by three interrelated phenomena beginning in the 1980s: a number of high-profile abductions, some by convicted sex offenders, of white, middle-class children by strangers; a rash of daycare sex abuse accusations featuring horrific tales of child sex abuse by multiple adults, often supposedly involved in sex rings and often with satanic overtones; and, lastly, the birth of “war on crime” rhetoric and policies, with a related victims’ rights movement, whose effect has been to increase criminal sanctions and punishment for *all* crimes.

Paula Fass places the American hysteria about child abduction in the context of American history. Fass argues that the first wave of obsessive attention to child kidnappings can be ascribed to the 1874 kidnapping of four-year-old Charles Brewster Ross. His parents at first refused to pay the \$20,000 ransom, but they changed their minds after receiving massive amounts of negative publicity. The family used public awareness about the case to turn the abduction into a “national obsession,” and they were, according to Fass, the very first family to create and distribute missing children posters. Fass argues that the Ross kidnapping helped put child abduction into the consciousness of American parents, and that the “public revulsion/fascination” with these cases grew each time another high-profile abduction occurred, as we can see with the even more notorious kidnapping of the Lindberg baby.

Fass believes the reason for the disproportionate fears about stranger kidnappings (they are after all, exceedingly rare, both then and now) relates to both the sense that parents are solely responsible for child safety and “the very real limits of police actions in cases of this kind.”<sup>3</sup> The father of Charles Ross, like the parents of Adam Walsh, Megan Kanka, and other kidnapped children, devoted the rest of his life to preventing child abductions and finding missing children. Today, parents use the media and publicity to find abducted children, while also pushing for laws to prevent these rare but extremely tragic events. And so it is no surprise that parents are even more fearful, more anxious, and more obsessed, with this problem, since the media is far more sophisticated and pervasive than it was in 1874. Kidnapping represents something parents cannot control, and with sexual abuse and rape replacing ransom as a motivator of kidnapping (as in the 1924 kidnapping and murder of a boy by rumored homosexuals Leopold and Loeb), now all children, and not only the wealthy, were at risk.

Debbie Nathan and Michael Snedeker, in their analysis of the child sex abuse hysteria and “satanic panic” of the 1980s and early 1990s, argue that social and economic changes played a key role in prompting the rash of false allegations of child sexual abuse in daycare centers, writing, “A decade’s preoccupation with moral conservatism, subversion myth, and demonology would come full circle with the frustrations of feminists, child-protection activists, and parents who watched helplessly as the government turned its back on youngsters’ well-being. The country was ripe for a drama to enact this angst.”<sup>4</sup> Although most of those wrongfully convicted during the daycare panic have been exonerated, one lingering effect of the scare is overwhelming support for increasingly strict sex offender legislation. The “satanic panic”

helped popularize many flawed ideas and misperceptions about sex offenders and the nature of sex offenses, even though the majority of these cases were ultimately overturned or dismissed.

The missing children's scare of the 1980s also played a prominent role in the development of sex offender legislation. Nathan and Snedeker point out how even though such crimes were exceedingly rare, a few terrifying instances of child abduction by strangers led to a full-scale panic. They then go on to attribute the origins of the "sex panic" to a variety of factors that converged during these high-profile child kidnappings. "There are, of course, violent crimes committed by sexual psychopaths against children," they write, however "such offenders are extremely rare, but during the missing children scare, they became the focus of intense grass-roots organizing by a group emerging from the new 'victims' rights' movement—a national effort that had begun by demanding more sympathetic treatment of people who had been raped and assaulted, but which by the late 1970s was teaming up with conservative, law-and-order police and prosecutor organizations."<sup>5</sup>

In his book, *Threatened Children: Rhetoric and Concern about Child Victims*, Joel Best describes the origins of the rise of the full-blown hysteria surrounding missing children and stranger danger. He argues that one reason for such panic was the use and abuse of statistics in the early media coverage of the problem. The numbers asserted by those he calls "claims makers" were utterly unbelievable, including such wild claims as 1.8 million missing children per year, 50,000 stranger kidnappings (with only 10 percent returned to their parents), 4,000 "unidentified" children buried each year, and 50,000 child victims of pornography, all statistics presented by various child advocacy groups.<sup>6</sup> These numbers emerged as the panic about missing children was growing, and as groups focusing on missing children were building moral and financial support to become established organizational bureaucracies. But in 1985, Best notes, the *Denver Post* published a critical analysis of these figures, placing the actual number of stranger abductions in the prior year at a mere 67. And Best's own estimates, after analyzing the 1984 figures from the National Child Safety Council, place the number of stranger abductions in the range of only 30 to 50 per year.<sup>7</sup>

Indeed, according to a 2009 FBI audit, the majority of missing children cases involve not just runaways, but, even more specifically, "runaways from juvenile facilities," and a full 98.8 percent of missing children are ultimately returned to their homes. Likewise, only an

estimated 0.0068 percent of missing child cases represent “true kidnappings by a stranger.”<sup>8</sup> In addition, the FBI audit cites a study examining substantiated cases of child abduction–murder between 1968 and 2002, which found only 775 such cases, for an average of 22 per year, a far cry from the overblown statistics disseminated by advocacy groups during the height of the panic.

The victims’ rights movement, closely connected to the war on crime, which began formally in 1972 under Nixon’s reign, has also profoundly changed the way victimhood, crime, and the law are viewed. The war on crime has resulted in vast increases in those under state control, whether in prison or on probation and parole. Martin Dubber, in his careful history of the victims’ rights movement, argues that the key feature of the war on crime focuses on preventing threats to certain communities of interest. He writes, “The war on crime is preventative in that it focuses on the threat, rather than on the occurrence of harm. It’s communitarian in that it seeks to eliminate the threats not to persons but to communities of one sort or another. And it’s authoritarian insofar as the community it protects against outside threats ultimately turns out to be the state.”<sup>9</sup>

According to Dubber, the war on crime is driven by a white, middle-class fear of violent crime, even though that is the demographic group least likely to ever experience it. Even as crime rates drop, advocates of the war on crime continue to insist on its further expansion, claiming its apparent success at decreasing crime as evidence of its necessity. Most victims of violent crime, as well as the offenders facing longer sentences as a result of the war on crime, are poor minorities, yet the most vocal and successful advocates for victims’ rights are middle-class whites. In particular, Dubber notes the power of the image of the child abducted and murdered by a random stranger: “nothing excites the communal punitive reflex of all potential victims (that’s all of us) more than the murder of a child. No victim is more helpless than a homicide victim, except for a homicide victim who is also a child and even more so, a girl.” Not infrequently, family members of homicide victims become the strongest advocates for victims’ rights. (Dubber notes that technically these are “survivors’ rights” or a “relatives of victims’ rights movement” because the victims are not living and are no longer in need of either protection or rights.) The family members of murdered children often, as Fass observed in her history of kidnapping, push for laws and lobby for legislation, working closely—and publically—with politicians. Dubber explains, “The helpless victim is precisely the sort of image that fits into a state-centered system of criminal administration.”<sup>10</sup>

The problem with this scenario is not that murdered children are unimportant, but these individual, rare, and tragic events are used both as an impetus for new policies and laws and as justification for increasing consequences for all types of crimes. These events bring us together, because they incite universal outrage, allowing us to appear to be doing something by getting tougher on all crimes. Dubber writes, “So victims’ rights are protected by curtailing defendants’ rights, by admitting otherwise excludable incriminating evidence, by increasing prison sentences, and by expanding the use of capital punishment.”<sup>11</sup> The combination of the war on crime and the victims’ rights movement has created the “one-size-fits-all” approach to the draconian sex offender laws, providing a context for ignoring the realities or nature of specific offenses or circumstances. More specifically, as Dubber notes, “the new law of sentencing is offense focused when it comes to denying sentence reductions for minor offenders but offender focused when it comes to justifying sentence enhancements for major offenders. In other words, it’s about longer sentences, first and foremost.”<sup>12</sup> If we view the sex offender laws in the context of the victims’ rights movement, they appear to be just because they provide additional support for the victim, beyond standard criminal justice sanctions, not only by additional punishment but also by long-term public shaming.

In *The Politics of Child Abuse*, Costin, Karger, and Stoesz demonstrate how the media recontextualized child abuse as a middle-class issue by focusing on sexual abuse—the form of abuse most likely to involve middle-class children—as though it were emblematic of child abuse in general. (They note that in doing so, in “deflecting attention from the most vulnerable victims of child abuse—poor children, who statistically make up the bulk of abused children—the media have hurt rather than helped defenseless children.”<sup>13</sup>) The media, they argue, found that the public responded to the “lurid details of high-visibility sexual abuse cases.” The problem with the media fascination with extreme cases, such as murders by sexual psychopaths, is that it has “encouraged the trivialization of the problem. Instead of sensitizing the public to the real problems of child abuse, the media’s persistent emphasis on the details of these cases has transformed child abuse from a social problem to a social spectacle.”<sup>14</sup>

### **She Was My Student, But We Were in Love...**

“Tyler” (pseudonym) is a sex offender. When he was 25, he became romantically involved with his student. She was 15. Her parents

reported him to the police after they taped conversations between Tyler and their daughter. He confessed to the police and pled to a misdemeanor sex offense, with the understanding that he would spend 10 years on the sex offender registry. Since his plea deal, however, the laws have changed, and now he will probably have to serve 30 years on the registry. When the girl turned 16, the judge in his case allowed them to date, and they stayed together for 7 years. Her parents regretted going to the police, and he “became a part of her family.” The judge wanted him on the registry, says Tyler, so that he would not ever be allowed to teach again. He says, “I had no idea what it meant to be on the registry. I knew I had done something wrong and I didn’t want to beat the system, even though it turned out that her parents had used illegal wiretapping and I could have fought the plea. I didn’t realize I’d be on the Internet or the public registry, and I wanted to do my time. I spent 8 months at a county detention center.”

Prior to the conviction, Tyler had a steady job as a teacher and says he was well-liked and well-respected. He “loved teaching,” but for the past 12 years, since his conviction, he has worked in numerous jobs in the restaurant industry and has moved multiple times because of being publically visible on the registry. He says it is not easy to find work and that multiple times he has been asked to leave jobs after other employees have found out he is on the registry—even when his employer was already aware of his background. Once, another employee said she would quit if she had to “work with a child molester,” so he left. Another job was at a large fast-food chain, and while he was well-liked by management, they let him go because there were too many teenage employees. At another restaurant, he was let go after other workers found out about him and the managers worried about “negative publicity.”

Tyler sounds most disappointed about a job he had at which he was hoping to get a management position. He had worked there for three years, and the manager knew about his background but still liked him and was pleased with his work ethic. A woman he knew through a friend somehow learned he was on the registry, and she became enraged. She came to the restaurant and screamed in front of patrons and other employees that he was a “child molester” and demanded he be fired. His manager refused, but the woman, furious, wrote to the corporate offices complaining about him, and he was immediately fired, “even though I’d been there for 3 years and had never had a complaint.” He says, “Every job I’ve had in the past 12 years someone

has found out about me and I've been fired or had to leave." Tyler faces 20 more years on the sex offender registry, but says "Even my ex-girlfriend and her family, the ones who turned me in, are working to get me off the registry because I've done my time, even though we aren't dating any longer. They know I've done my time."

He says he hates that he has to move constantly because of his inability to hold a steady job, not only because of the stress of moving but because the residency restrictions make moving an onerous task, and he is devastated that he will be on the registry for at least two decades longer than specified in the terms of his plea deal. He says he cannot have normal relationships because of the restrictions mandated by the registry. With one woman he dated, things "were getting serious," but he broke it off because she had four daughters and he "didn't want to put her through the pain of dealing with me and having to explain about me to her family." Tyler expresses sadness, explaining, "I'm under constant stress and anxiety. I'm not the same person I used to be. I walk in fear. I just want to blend in, but I'm constantly worried that someone is gonna find out about me. I think of myself in one way, but then I see myself on the registry and on the Internet. I'm not attracted to kids but now I get nervous and anxious around them." Tyler is clearly depressed, and he desperately misses teaching. "All I ever wanted to do was to teach art. My high school art teacher was my idol and mentor. To this day, my former students contact me and stay in touch with me."

### ***Do Sex Offender Registries Reduce Recidivism?***

Sex offender registries have been growing throughout the U.S. since they were first enacted in 1994, and today there are over 800,000 individuals (819,218 as of December 15, 2014) on sex offender registries.<sup>15</sup> In 2003, the Supreme Court upheld the right to maintain public registries, a ruling that allows states to post the names, photographs and addresses of sex offenders online. The rationale for sex offender laws is that strict monitoring of anyone ever convicted for a sex offense will keep children safe. Most sex offenses (66%) involve victims who are minors,<sup>16</sup> so the view that sex offender laws are justified by child safety concerns might seem at first glance valid. But the main problem with this logic is that the vast majority (over 85 percent) of cases of sexual assault involve a family member or acquaintance of the victim, and this number is even higher (93 percent) when the victim is a child.<sup>17</sup> Thus, public registries, aimed solely at preventing the

extremely rare form of “stranger danger” sexual offenses against children, do nothing to protect the vast majority of potential child sex abuse victims. Not only that, it is important to also note that one-third of sex offenders in these cases are also children themselves (under 18), a reality that fundamentally undermines the idea that these laws are effectively in place to protect children. Finally, while there are different studies of recidivism rates, there is no evidence that sex offenders are more uncontrollable or pathological than other offenders, and they often have much *lower* rates of reoffense than almost all other types of offenders. One large study, for instance, found that only 3.5 percent had a rearrest for a sex offense within 3 years of leaving prison,<sup>18</sup> while a Bureau of Justice Statistics study finds that 5.3 percent of sex offenders were ever rearrested for any type of new sex offense. Research from Washington State, in fact, found child victim sex offenders have the lowest sex offense recidivism rate (2.3 percent) of all sex offenders, and rapists with adult victims have the highest (3.9 percent). Overall, felony sex offenders in Washington have a 2.7 percent recidivism rate for additional felony sex offenses. Notably, the Washington State study also found that sex offender treatment in lieu of jail or prison resulted in the lowest rates of rearrest, supporting the idea that treatment is effective, in stark contrast to the media and legislative assumption that child sex offenders are untreatable.<sup>19</sup>

These laws appear to be an effort at increasing public safety but, in reality, are actually scarlet letter public policies, targeting a despised population very few are willing to defend, driven by misinformation and an ongoing moral panic about sex offenders, as well as by opportunistic policymakers playing on such public fear. These laws do not effectively prevent sex offenses or protect children, and, worse, they *create* harm by subjecting one large and diverse group of offenders to cruel and unusual punishment unrelated to any risk they actually pose. A study conducted by the Georgia Sex Offender Registration Review board found that only 5 percent of offenders on the registry could be classified as “predators”—meaning only that small number were “clearly dangerous” to children. The registry does not differentiate between this small group (in Georgia, for example, the total number of these dangerous predators constituted as few as 100 people out of the over 20,000 people on the sex offender registry) and the rest of the list, which includes teenagers having consensual sex, college students streaking, and drunken individuals urinating in public. In at least 6 states, some with prostitution-related offenses are



also placed on the registry. As a result of including such a large and diverse group of offenders on the registry, law enforcement is overwhelmed and parents are terrorized, since no one can tell whom to truly fear.<sup>20</sup>

Sex offenders are not constitutionally protected after they complete state- or federal-mandated sentences. Lifetime registration and community notification policies, the rule in many states, create permanent stigma and branding for this group that is not applied to even the worst non-sex offending murderers. Advocates for sex offenders point out that drunk drivers, for instance, are far more like to reoffend, and that they thus present clear dangers for communities, and yet there is no push for public registries or community notification requirements for drunk drivers. These laws cause profound harm for the majority of those classified as sex offenders, like those described throughout this book. The vast majority are not predatory, repeat, or violent offenders, and their victims are not strangers. Nevertheless, registered sex offenders are treated as a homogeneous group, all equally punished for the sake of protecting against an extremely tiny minority. And, as we will see next, the registry is not even effective at protecting against *them*.

Amanda Agan conducted a careful statistical analysis of data from Washington, D.C. finding that the registries neither increase nor decrease the likelihood of reoffense. According to Agan:

The data in these three data sets do not strongly support the effectiveness of sex offender registries. The national panel data do not show a significant decrease in the rate of rape or the arrest rate for sexual abuse after implementation of a registry or access to the registry via the Internet. The BJS data that tracked individual sex offenders after their release in 1994 do not show that registration had a significantly negative effect on recidivism. And the D.C. crime data do not show that knowing the locations of sex offenders by census block can help predict the locations of sexual abuse. This pattern of non-effectiveness across the data sets does not support the conclusion that sex offender registries are successful in meeting their objectives of increasing public safety and lowering recidivism rates.<sup>21</sup>

Every single state, in addition to the District of Columbia, U.S. territories, and Indian Country, has a registry website where a few clicks allow anyone to find the sex offenders living around them. The Department of

Justice maintains a national website where one searches by name to find out if someone they know is a sex offender or one can search by zip code to find out which sex offenders live nearby. When one finds the name on the sex offender search page, the site then links to a page run by the specific state's criminal justice agency with detailed information about the offender, including a recent photo; description of the offense (although it is often difficult to determine the specifics of the offense, depending on the state); home address; work address; and the model, make, and license plate number of the offender's car. These websites are billed as a great resource for parents, who can use them to learn where sex offenders live, presumably in an effort to keep their children safe.

More recently, sex offender applications for smartphones have appeared to make it even easier to locate the homes of sex offenders. States like North Carolina, for example, created their own "North Carolina Sex Offender Registry" mobile application, which allows users to search for offenders near their address or even sign up for "e-mail alerts" if they are concerned about specific offenders or specific communities. There are currently over a dozen applications available specifically for locating sex offenders. The development of such new (and newly invasive) technology continues in spite of the fact that there is no evidence that children are safer when we know the specific location of prior sex offenders.

### **I Can't Have a Child Because My Dad Is a Sex Offender**

"Sarah" (pseudonym) is the daughter of a sex offender. He is on the registry for life, after being convicted of inappropriately touching his niece (technically: "sexual contact with a minor"). Sarah says her father is innocent, and her mother also believes this. Sarah says that a few years ago, her parents invited their 13-year-old niece to stay with them for a two-week summer vacation. Sarah, an only child, grew up in a comfortable home in a wealthy neighborhood in a large city, but her cousin came from a large blended family, with financial and other problems, and lived in a house with 15 other people in a rural area. The niece stayed with her parents for two weeks, while Sarah was away for the summer and about to start college. At the end of the stay, the niece asked if she could stay with Sarah's parents for the school year to avoid having to go back home. Sarah's parents said it was not possible. On the day that the niece prepared to go back to her own family, she called 911 and told the police that Sarah's father touched her inappropriately and "put his hand inside the waistband" of her pants.

Sarah's father, a successful businessman with no criminal record of any kind, vigorously denied the charges. His family, including Sarah and his wife, stood behind him and supported his refusal to take a plea, despite great pressure from the court. They finally went to trial after a four-year struggle with prosecutors who would not drop the case, and spent, Sarah says, at least \$500,000 on defense attorneys. The family built a strong defense, finding multiple friends of the niece who testified at the trial that she had told many different, contradictory stories about the incident with Sarah's father: that she was raped, that she was drugged, and that he fondled her at a movie theater. The niece's friends all testified against her. By the time the trial commenced, the niece, then 17 and pregnant, appeared with no support from any of her own immediate family members. Sarah says this was in contrast to her father, who was surrounded by many supporters, including his family, neighbors, colleagues, and friends.

The jury did not know what happened, because the story the niece told "didn't make sense and she was caught in a number of lies on the stand." The jury eventually recommended that Sarah's father receive five years of probation and five years on the registry, but it specifically recommended no jail time. Later, Sarah's family learned that the jury was undecided but felt under pressure to deliver a verdict. Ultimately, the jury decided her father was guilty. Jurors later admitted they did not really know what happened, but, Sara says, jurors told their lawyer, "They worried that *something* happened and they didn't want to take a chance and deliver a verdict of not guilty. So they thought if they recommended 'no jail' that would be a good compromise." The judge decided that her father should receive 10 years of probation and sentenced him to lifetime sex offender registration but agreed with jurors that he should not receive any jail time. Later, after the sentencing, and after learning more details of the case, some of the jurors wrote letters to the judge and the district attorney (DA) saying they felt pressured to deliver a verdict and felt, now, that they had made a mistake.

Sarah says her family has been destroyed by the stress of dealing with the criminal justice system, even though her father never spent time in jail. Prior to the incident her mother had worked as a nurse, but Sarah says she is now unable to work due to anxiety and depression. Sarah's father has to attend state-mandated sex offender counseling, and they feel humiliated in front of their neighbors every time the probation officer stops at the house in a car clearly marked "sex offender treatment program." When the sex offender unit conducts

home visits, they leave a sign on the door that indicates it is a sex offender's residence. Sarah says that the DA acknowledged he was reluctant to pursue the case, but had no choice when her father refused to plea and insisted on going to trial.

Today, Sarah's father is on the registry for life as a child sex offender. He can no longer go to the mall. He cannot go to church. The police can view their phone and Internet records. Sarah's mother says they cannot even watch R-rated movies at home, and they are forbidden from possessing any "lubricants or sex toys." When her father travels around the state to work, he has to notify each county's police department at what address he will be staying and how long he will be there, and when he returns home he has to notify his local police department again. He cannot stay in a hotel with a pool or one that is close to a park or playground.

Sarah is distraught and, for now, feels she cannot even have a child with her new husband because her father cannot be around children. They are very close, and she feels that it will be very painful when she is forced to exclude her father from being around his own grandchild. They cannot go to family functions because they have relatives under 18. Her father has to go with her mother to shop for groceries or clothes. They cannot go to any restaurants that have child play areas or to certain drive-through fast-food restaurants because they are considered "places where children hang out." Sarah is fiercely supportive of her father and repeatedly says that he was falsely accused and wrongfully convicted. She has no faith in the court system or the state and is bitter about the whole experience. "My father now has to ask my mother for everything. He can't go to the mall so whenever he needs anything he has to ask her. This has destroyed her. He can't even go to the mall to buy a Christmas present for his wife."

Sarah's mother worries that her husband will lose his job if anyone looks him up on the registry, and she is grateful that this has not happened so far (he has been on the registry for about seven years). Her husband is mandated to attend sex offender therapy, which, after his conviction, involved therapists telling him he was a monster and threatening him with prison for not participating in a "satisfactory" way. They eventually moved so that her husband would qualify for a different sex offender treatment program, at which he would not be treated with total contempt. Sarah's mother says this has been a hardship beyond comprehension. The financial and emotional costs have been overwhelming, and she feels that her husband has "lost all hope." On Halloween, her husband is supposed to spend the night at

the sheriff's office. Although her husband has had some family and community support, there are still neighbors who have told her "we are scared for our children" when they learn her husband is on the registry, even after she relates the circumstances of his case. They now have few friends. "My husband is unable to leave the state. He has lost all hope. I don't see any hope for reform. If anything, the laws are getting worse."

Sarah is incredulous at the hypocrisy and inconsistency of the sex offender laws her father now has to follow—and if he does not comply, he can be sent to jail on the smallest technical violation. He has to take polygraph tests as a required part of his "treatment," she says, and it makes little sense that they are required for convicted offenders even though polygraph evidence—which might easily have exonerated him—was not admissible at his trial. Sarah sighs, clearly exhausted and angered by the ordeal: "My father paid all the fines and completed all his community service. This is horrible and it feels like it will never end. It even keeps my husband and me from moving forward. I cannot have a child with my husband because my dad can't be around anyone under 18."

### ***Community Notification and Residency Restriction Laws***

Many states also have community notification laws for sex offenders, which allow law enforcement to actively notify neighbors and others that a sex offender lives in their midst. These laws govern where offenders may live, work, and spend their time, and they often make it impossible for offenders to reintegrate into society. Community notification, like public registries, reflects a policy unsupported by research, constituting a form of public shaming that exists for no other group of offenders, including repeat violent offenders. One study, for instance, found that community notification may even "increase recidivism among registered offenders by reducing the relative attractiveness of a crime-free life. This finding is consistent with work by criminologists showing that notification imposes social and financial costs on registered sex offenders, perhaps offsetting the relative benefits of forgoing criminal activity."<sup>22</sup>

One Human Rights Watch report, focusing on the flawed basis and outcomes of these laws, interviewed Patty Wetterling, the mother of Jacob Wetterling, the subject of a high-profile kidnapping case in the late 1980s. Jacob was abducted in 1989, when he was 11, and was never found. The Jacob Wetterling Act, passed in 1994, is named after him and was among the earliest federal laws to include provisions for

sex offender registries. Patty continues to be a prominent advocate for child safety, but she no longer supports the registry laws she had worked to develop. Patty told Human Rights Watch that her support for these laws has diminished because of data showing that most sex offenders do not reoffend, most sex crimes are committed by first-time offenders, and because sexual abuse rarely involves strangers. Nonetheless, support for these laws remains strong, on the mistaken grounds that children are at significant risk from stranger predators. Wetterling believed when her son was abducted that it would have been ideal if law enforcement had lists of known child sexual predators, but she didn't realize it would ultimately lead to instant and widespread access to public registries with photographs and personal information for anyone classified as any sort of sex offender. In spite of her grief and trauma, Wetterling has openly spoken out against the ineffectiveness and damage caused by the public sex offender registry.

Going hand in hand with community notification laws are those that place residency restrictions on former sex offenders. Similar to the studies on the efficacy of registry laws more generally, a Florida study examined whether laws prohibiting sex offenders from living near schools or daycare centers decreased child sex offense recidivism rates. The researchers found “no significant relationship” between reoffending and living near schools or daycares and, when comparing offenders with similar characteristics, found that proximity to children does not increase sex offense recidivism rates.<sup>23</sup>

In a *New York Magazine* story about the effects of residency restrictions, Jennifer Gonnerman profiles a small town in Suffolk County, Long Island, where 45 sex offenders have ended up living, thanks to limited housing options elsewhere. These sorts of “sex offender clusters” are not uncommon. In Florida, for example, more than 100 sex offenders live in a mobile home park in St. Petersburg,<sup>24</sup> and another group of almost 70 lives under a bridge in Miami.<sup>25</sup> As Gonnerman writes, these “sex offender clusters” are usually in communities torn apart by drugs and crime, where few choose to live if they have other options. Even in Manhattan, a city with no residence restrictions, Gonnerman notes that there are 82 men living in a homeless shelter in the midtown area, presumably because they cannot find housing elsewhere, thanks to their sex offender status. Her piece tells the stories of the men living in the crime-ridden area in Suffolk County, and these stories make it hard not to recognize the injustice of a system that creates a caste of outsiders forced to live together, branded in such a way that they have little interaction with mainstream society.

She writes, “Turning these men into modern-day untouchables and relegating them to the fringes of society is not the best idea, either for the men themselves or as a strategy for improving public safety.”<sup>26</sup>

### ***Vigilante Justice and Public Registries***

Not surprisingly, these scarlet letter laws create a context ripe for harassment—and even violence—aimed at sex offenders. Human Rights Watch found that states do not have systematic policies to track cases of vigilante justice against offenders on the registry (along with suicides by ex-offenders who cannot overcome the harassment and other hurdles that result from being on the registry), but, as Stephen Yoder writes in an essay in *The American Prospect*, “giving a nervous public instant access to the addresses and photos of sex offenders produces none-too-surprising results. Though no reliable national statistics exist on vigilante violence against sex offenders, a few studies indicate widespread abuses.”<sup>27</sup>

Other studies based on the surveys of offenders on the registry also reveal that almost half<sup>28</sup> experienced harassment because of the registry, and about 20 percent<sup>29</sup> had their property damaged. In some cases, sex offenders are victims of violent crimes, with some especially notable high-profile cases in Maine, California, Washington, and South Carolina, in which sex offenders were targeted and killed. In 2013, a South Carolina couple killed a man, Charles Parker, and his wife, after discovering Parker was on the sex offender registry. The killers had previously been arrested before a planned attack on another person on the registry. Jeremy Moody, one of the two suspects, apparently went through the state sex offender registry to find his victims. Moody informed Parker that he was killing him because he was a child molester; as it turned out, Parker had been convicted of sex offenses a decade earlier, but not sex offenses against children.<sup>30</sup>

In Tennessee, Timothy Chandler had his home burned down after he was arrested on child pornography charges and after a story about the arrest had appeared on the local news. The men charged with the crime told the police they wanted Chandler to move away because he was “a pervert.” The men watched his house burn down from a “close location.” A neighbor blames the incident “on a combination of alcohol, drugs, and ‘no sense,’” and an article on the case mentions that the arsonists had a history of drinking-and-driving arrests. Chandler told police that he wished he had been killed instead of his 37-year-old wife, who died in the fire.<sup>31</sup>

There is no doubt that American culture harbors a nearly universal fear of sex offenders. For instance, a 2005 Gallup poll finds 94 percent of Americans in favor of laws requiring registration of people convicted of child molestation, and only one-third of respondents expressed concern that these registries could lead to harassment.<sup>32</sup> A more recent poll, in 2010, by Rasmussen, found that 83 percent of respondents support a public registry, and 72 percent support lifetime registration policies.<sup>33</sup>

In a law review article, Dierdre Smith points out that psychiatry cannot conclusively determine who is going to recommit a sexually violent offense. She argues that these laws, particularly the civil commitment laws that allow permanent confinement for those deemed to be the most incurable types sex offenders, suggest to the public that those most likely to commit violent offenses are already locked up for life, when this is not the case. Essentially, the laws are based on fear and faulty rationales and do little to actually prevent sexual violence or protect the public, and, as importantly, she argues, there are elements of the laws that are fundamentally unconstitutional.<sup>34</sup>

## **I Was Addicted to Pornography**

“Jason” (pseudonym) is 54 and a sex offender. He lives in a halfway house. He is no longer on parole and is permitted to move out, but he cannot find a landlord willing to accept someone on the sex offender registry. He spent a year in a Texas prison for downloading child pornography. Jason claims he was “addicted” to pornography and mostly looked at adult porn. He is not on parole any longer, and he is happy about that because he disliked spending time in the sex offender treatment program that was mandated by his parole. He felt different from the other sex offenders because of the noncontact nature of his crime, and he feels the other sex offenders in the program were “horrible people to listen to.” He lives with 25 ex-offenders and he hates it, but he cannot move because he has nowhere else to go. He feels lucky that he managed to find a job after prison, even though he is on the registry.

When he applied for his current job, he told the employer about his past and she was sympathetic, and so he was hired to work in the IT department of the business. He says he found potential landlords, but they all ended up deciding they were afraid to have someone on the registry living in one of their apartments, even when they seemed willing to rent to him after learning his story and meeting him. Jason



is consumed with guilt and says he wishes he could repay society “for letting them down. But I can’t do any of these things. I’m worried, every single day when I go to work, about when someone is going to find out and tell someone else.” Jason says he loves his job, but he is consumed by constant anxiety that he will be targeted and harmed because someone sees his picture on the registry, with his name, address, and license plate number. Jason will be on the registry for the rest of his life, and he doubts he will ever be able to have a normal relationship with a woman, because, he says, “no matter how forgiving she is, why settle for this guy? When this guy is a sex offender!” He says the main problem, besides the constant fear and anxiety, is that he cannot find housing. He lives in a major city in Texas, with money from his job and also a small inheritance, but he can live only in a halfway house because he cannot find any other options.

### *Unintended Consequences of Sex Offender Laws*

Sex offender laws, and especially the residency restrictions, also have the effect of increasing homelessness. After Jessica’s Law was implemented in California in 2006, which included a provision restricting registered sex offenders from living closer than 2,000 feet from parks and schools, homelessness among sex offenders skyrocketed. Statistics from the California Sex Offender Management Board show that the number of homeless registered sex offenders increased from 88 to 6,012 in the five years after the implementation of Jessica’s Law.<sup>35</sup>

Roger Lancaster and others suggest that the sex offender registry results in a form of “social death” for offenders.<sup>36</sup> This “social death” occurs because sex offenders are explicitly stigmatized, literally unwanted, and pushed out by society.

Thirty-five years of virtually nonstop sexual panics have traumatized the public with imaginings of risk, danger, and harm. These alarms foster a conception of the state that stresses its role as protector and punisher, stimulating the production of laws that undermine democratic legal norms in durable and pernicious ways: the protection of innocence trumps a presumption of innocence, and the public’s right to security trumps the time-honored idea of limits of punishment.<sup>37</sup>

It is not only the high-profile federal and state laws that create onerous guidelines governing the lives of released sex offenders.

Sex offenders in California, for example, are governed by many well-known state and federal restrictions, including the comprehensive Adam Walsh Act, but in recent years many California cities have passed their own additional ordinances. While some of these have been found to be unconstitutional, such ordinances are still politically popular. In Santa Ana, for example, sex offenders were forced to wear prison uniforms for their online registry photos, even those who were never incarcerated. The city also made it a misdemeanor for registered child sex offenders to enter parks and children's facilities—and, as noted by the president of a sex offender advocacy group, “Not only are registrants prohibited from participating in most recreational areas in the city, they are not allowed to access public information in the city's library.”<sup>38</sup> These efforts reflect the extent to which the public is supportive of any law restricting the movements or activities of sex offenders, even when it serves little purpose.

In 2012, Louisiana passed a law requiring sex offenders to include their criminal status (either “sex offender” or “child predator”), and details about their conviction, on any social networking profiles. The Louisiana governor had already tried, earlier that year, to ban all sex offenders from all social networking sites, but a federal judge ruled that too broad. (They have since passed a law banning certain types of offenders from such sites.) Even though Facebook and other social network sites already ban sex offenders, and have for many years, these laws were passed to provide an extra incentive for sex offenders to stay away from social networks—and possibly away from the state entirely: those in Louisiana who violate this law will face “20 years prison time with hard labor, without parole and ... with fines up to \$3,000.” The Republican state representative who pushed for the law requiring the “sex offender” or “child predator” status in Facebook/Twitter/LinkedIn profiles commented that social networking is now used by almost everyone all the time, and, “if you look at how common it is, that's 24 hours a day, seven days a week for somebody to interact with your children and your grandchildren.”<sup>39</sup>

### **My Son's in Prison for Things We All Used to Do as Teenagers ...**

“David” (pseudonym) is the father of a sex offender. His son, he says, was always “socially retarded” and often spent time with his younger brother and his friends. When he was 19, he fondled a girl who was 15. The girl, he says, liked his son, and they were beginning a romantic

relationship, often texting back and forth. Someone in her family reported them to the police, and the DA acted aggressively on the case. They hired “the best defense attorney” in their Texas town, but the DA’s pursuit was relentless. The girl, says David, was almost 16, which would have decreased the age difference between them from 4 to 3 years, providing his son stronger grounds for his defense (in Texas, statutory cases are prosecuted differently when the age difference is 3 years or less), but this did not sway the DA. David’s son wound up taking a plea deal, agreeing to a five-year prison sentence. According to David, even the family of the girl who reported the offense was shocked that his son had received so much prison time.

David is concerned about when his son returns home. He does not want his neighbors to know that his son is a sex offender, and he has no idea where else his son could eventually live. The family lives in a semirural county, and David cannot find any community, or even a mobile home park, where his son might be able to move when he leaves prison, so it appears he will have to move back in with his parents, even though David would like to see him lead an independent life and find a career. “We are coming to terms,” says David, “that our son will have to return to our home and we have no idea what we will face.” David and his wife have a business in the neighborhood, and they fear that they will lose clients after their son returns home and their home address becomes listed on the sex offender registry. David says he has seen that many of his neighbors now use smartphones and applications that highlight the addresses of local registered sex offenders, and that has increased his concern they will be publicly identified and ostracized.

David says, “I am a conservative. I watch Fox News. I don’t believe in a culture where people don’t have to work. But I see our local news and it is very reactionary. I hear these stories and I understand that many people need to be watched. But we have gone so far the other way.” He says that many parents do not realize how much their children might be at risk of committing a sex offense. David grew up in the South and says that it was traditional for older guys to date younger girls, that he is deeply disturbed about these laws and is now starting to become an activist. But David mostly worries about his son and about what will happen to him now that he will be on the sex offender registry. He says he learned that because of the nature of his son’s offense, there is a possibility it could qualify as a “Romeo and Juliet” case, eventually allowing his son to leave the registry. David is pessimistic, however, because he says no one in the county where they live has ever been removed from the registry. Right now, David says, he is

just continuing to work to find his son a home of his own for when he gets out of prison.

### ***To Catch a Predator ...***

The media cannot get enough of sex offenders. Although crime is always a popular story, sex crimes against children are among the most frequent (and lascivious) subset of crime news. In some cases, the media serves as a muckraking force, explicitly trying to push politicians and law enforcement agencies into acting even more aggressively toward sex offenders. In 2014, local news station 8 in Dallas, Texas, aired a report decrying the city's lack of residence restrictions. The station interviewed a supporter of the residency restrictions who claimed that because all the cities surrounding Dallas have "child safety" or "buffer" zones, "we're seeing sex offenders flood into the city of Dallas because we have no restrictions." After the report, the mayor told the news station he would "take action."<sup>40</sup>

The popular TV series, *To Catch a Predator*, is the most overt example of this. The show famously featured undercover officers posing as children to capture men seeking to have sexual relations with them, or occasionally a very young-looking 18-year-old actress, hired by the show, helped lure men into the trap. When the men would arrive for the meetings, the host of the show, Chris Hansen, would surprise them and film their reactions to being caught. The show, which aired from 2004 until 2007, was considered a success largely because the public enjoyed watching the men squirm during the surprise TV interview, after which the men were walked off in handcuffs by the officers. Even though the meetings would not have occurred if the officers had not posed as children, the methods used to ensnare these men were technically legal, and while there were many vocal critics of the show, it still stayed on the air (perhaps due to our general cultural sense that such men are so sick, and so dangerous, that any methods would be justified in effecting their capture).

When the show was rebroadcast in the United Kingdom, in 2010, *The Guardian* TV reviewer Charlie Brooker wrote that the show was troublesome not only because of "the overpowering whiff of entrapment" in the police officers' and the shows' methods but also because of the "collusion between reporters, vigilante groups and police." (The show worked with an online vigilante group, Perverted Justice, to find the men who wanted to meet children for sex.) Brooker writes, "When a TV show makes you feel sorry for potential child rapists, you know it's doing something wrong."<sup>41</sup>

*To Catch a Predator* got into trouble in 2006, when a Texas DA, Louis Conratt, committed suicide while a SWAT team entered his home to arrest him. A camera crew was waiting outside the house and recorded the events. Conratt had been chatting online with an adult posing as a 13-year-old boy. They had exchanged pictures and had chatted during a two-week period, but Conratt eventually ended the exchange and never made plans to meet him in person. The show, working with Perverted Justice, contacted the police, who brought a SWAT team to arrest Conratt at his home—at which point, fearing the consequences of being found out, Conratt killed himself. *Esquire* and *Rolling Stone* both wrote articles critical of the methods used by *To Catch a Predator* and specifically questioned the tactics in the Conratt case. Conratt’s sister eventually settled a lawsuit against NBC.

Police officers commonly use the same techniques as those of *To Catch a Predator* to catch other potential sex offenders. A 2014 *USA Today* exposé about a series of arrests in Polk County, Florida, showed that sometimes officers meet men on adult dating sites, first enticing them into conversation and only then telling the men they are supposedly under 17. As the article explains, “When men, many of them younger than 25 with no criminal history, respond, officers switch the bait and typically indicate their age is really 14 or 15 years old. However, sometimes the storyline isn’t switched until the men, who were looking for legal love, already start falling for an undercover agent.” The article notes that at a press conference, the sheriff of Polk County, Grady Judd, told reporters that “hunting predators” is his favorite activity and that “his office’s predator stings have been featured in three MSNBC specials as well as a recent CNN series.” The article suggests that one reason for the emphasis on Internet stings to catch men who want to have sex with children is related to federal funding streams.

The federal Internet Crimes against Children Task Force program, a source of funds to fight cyberenticement and child pornography, has received over 200 million dollars from Congress since it was founded in 2003.<sup>42</sup> In January 2015, a local Tampa, Florida, news station published an investigation about how police use sex sting operations to lure men seeking adult women into situations involving minors. The report details how police sometimes targeted men who initially sought out adults in personal ads, by claiming to be an adult with a “teenage ‘sister’”; the article notes that, “even though many of the men had no interest in the underage decoys, if they travelled to meet the adult, they were arrested as a ‘sexual predator’ and charged with ‘traveling to meet

a minor’.”<sup>43</sup> The report details the case, similar to some of the stories told by the convicted offenders in the book, of a man who put up a Craigslist ad looking for women specifically over age 18. An officer started a chat with this man and claimed to be a 14-year-old girl. The man refused, repeatedly, to meet up with the girl because of her age, but because he did not immediately end the chat once learning of her age, police went to his home and arrested him on child sex predator charges. Ultimately, prosecutors did not pursue this case, but his name (and the name of other men arrested in similar stings but never charged) remains public on Web sites with news releases about the arrests. In another case, a 19-year-old chatted for days with what he believed was a 26-year-old woman, who kept pushing him to have sex with her 13-year-old sister even though he told her several times he was not interested; “ultimately, after hundreds of text messages, the man agreed to sex with both females, and was arrested upon arrival.”<sup>44</sup>

The report notes that detectives often targeted men seeking other adults on legal adult dating sites, “In most cases, detectives weren’t posting ads of children, but ads of adults looking other adults. They would then later introduce a child to the conversation, or switch his/her age to that of a teenager.”<sup>45</sup> The article also highlights how the excessive energy, time, and money (including federal funds) poured into these stings takes funding away from actual instances of cyber-crime. Even more disturbingly, police used the Florida Contraband Forfeiture Act to seize cars and cash from the men they arrested, because they were all initially charged with felonies related to child sex abuse, and law enforcement often kept the proceeds even when all charges were dropped. One 24-year-old man, they report, paid 10,000 dollars to get his own car back even though charges against him were dropped (he will also not get reimbursement for the fees he gave his attorney to help him retrieve his car).

It is well understood that the media has a strong impact on the way people think about sex offenders, but the extent to which the media creates positive attitudes toward sex offender *laws* is less clear. One study found that while the media does reinforce support for Megan’s Law and other community notification policies, even Americans who do not watch the news media are predisposed to supporting such policies, leaving the effect of media exposure unclear. However, the study did find that those who watch more news media might be less likely to support humane policies that are more effective at reducing sex offender recidivism, thanks to the standard misperceptions promoted by media coverage.<sup>46</sup> In other words, there is a visceral and

understandable inclination to believe that sex offender registries and community notification policies are effective, and the media only reinforces and increases resistance to meaningful reform of these already popular policies.

### **The Laws Are Crazy ...**

A team of three defense lawyers, based in Texas, who deal almost exclusively with sex offenders, spoke to me about the complex and far-reaching nature of current sex offender regulations. They say these restrictions and guidelines make it nearly impossible for their clients to stay out of prison. The laws even make it difficult for them to see their clients: their office is in close proximity to a softball field, so when their sex offender clients come to see them, they have to arrange to bring a parole officer along. They tell me this is an example of the “craziness” of these laws, because the softball games do not even begin until the evenings, after their office is closed. Some of their sex offender clients, they say, are not even allowed to talk to the press about the registry or any other matter without permission from the state. They had one client who obtained approval to go to his brother’s funeral; his caseworker showed up at the funeral. He had been convicted of rape 35 years earlier and had never reoffended. “What did they think? That he was going to rape someone for the first time in 35 years at his brother’s funeral?”

The lawyers complain, as many offenders do, about the corruption of the state treatment providers and the “one-size-fits-all” approach. They say all sex offenders are treated the same way, even though there are obviously many different types of sex offenses: “Why put someone who was 20 and had sex with a 16-year-old in a treatment group with ‘hard-core’ pedophiles?” They say much of their work involves offenders who get in trouble after providers claim they are not participating fully in treatment. The use of polygraphs, they say, is also problematic and inconsistent.

The problem, the lawyers tell me, is that when the sex offenders are mandated to go to treatment, the treatment providers tell the offenders that they have to confess, “over and over,” to whatever is in the police report, even, of course, when offenders insist they were wrongfully convicted and when they pled guilty only under duress or only to mitigate the risk of more severe sentencing. If they do not repeatedly confess, they are said to be in violation and can be sent back to prison. One lawyer I spoke to referred to the treatment providers as “literally unbelievable.” They have cases in which offenders were all instructed to masturbate during a group treatment session. They were then given

polygraphs and asked to confess to those very acts. “It is horrifying,” the lawyer told me.

They say many sex offenders have no legal representation, especially during the postconviction period, partly because of the way public defenders are funded in Texas. One lawyer said he returned to work after retiring specifically to help sex offenders because he was so horrified at the way they were treated. In many cases, he says, those charged with sex offenses accept a plea bargain to “make a case go away” without any understanding of what it means to be on the sex offender registry. These lawyers also express exasperation at the absurdity of the residency restrictions. In one case, an offender was not allowed to return to his home because it was too close to a drainage ditch. “They said that children play in the drainage ditch. They are going to absurd extents to impose these ordinances.” And the lawyers feel the restrictions are getting worse: “Politicians don’t want to be seen as being soft on sex offenders. ... Until the media helps the public understand that most of the offenders are not predators, I doubt much will change. Hell, I see kids going to prison for things my girlfriend and I did in the back seat of my car in the late 1950s.”