LIVING WITH RISK: THE AMERICAN EXPERIENCE WITH SEX OFFENDER LEGISLATION

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When Jesse Timmendequas moved to Hamilton Township, New Jersey, no one in the neighbourhood knew that he was a twice-convicted sex offender who had served six years in prison for attempted assault on a child.[1] On 29 July 1994, Timmendequas lured his neighbour, seven year old Megan Kanka, into his house, offering to show her his new dog. Once inside, he pulled her into the bedroom, raped her, and strangled her with a belt. Her body was left in a pile of weeds in a park near her home.[2]

If Megan's parents had known that Timmendequas was a child sex offender, would she still be alive today? We will never know, but the public outcry surrounding Megan's death and other highly publicized cases of child sexual assault and murder led lawmakers in the United States to pass measures intended to lessen the danger posed by violent sexual offenders.

As Canada struggles over the passage of the *Act to Amend the Criminal Code*[3] and other measures geared towards protecting the community from convicted sex offenders, it may be helpful to consider the United States' experience with similar public policy initiatives. It is still unclear whether these laws can survive constitutional scrutiny in America or if they will prove to be effective public policy. However, even if the answer to both of these questions is yes, these laws still do not address those who most often threaten women and children — family members and close friends who are never reported or prosecuted. Thus, while these laws may help control dangerous strangers among us, they do little to curb the dangers that lurk closer to home.

There is a growing consensus in America that a convicted sex offender's loss of liberty and privacy rights is justified by a compelling state interest to protect the public, particularly women and children. Many argue that secrecy is the main

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[1] "Sex Offender Indicted in Megan Kanka's Slaying — Death Penalty Will be Sought, Prosecutor Says" *The [New Jersey] Record* (20 October 1994) 3A.

[2] *Ibid.*

[3] *An Act to amend the Criminal Code (high-risk offenders), the Corrections and Conditional Release Act, the Criminal Records Act, the Prisons and Reformatories Act and the Department of the Solicitor General Act,* S.C. 1997, c. 17.

weapon of sex offenders. Once these laws remove that veil of secrecy, exposing offenders' identities to the public, offenders will be deterred from preying on unsuspecting victims. The irony of this is that the privacy concerns we are so willing to sacrifice when the offender is a stranger are the same ones we cling to when the offender is someone we know. The fear of "publicity" often prevents us from reporting and prosecuting sex offenders who are family members or close friends. Thus, if we are truly committed to ending sexual violence against women and children, the challenge is to expand the notion of what it means to "publicize" these crimes — thereby removing the veil of secrecy from all violent sex offenders, regardless of their relationship to the victim. Sex offender laws in America may be effective in some instances, but it is clear that we are still living with risk.

I. Sex Offender Legislation in America

No other legislative initiative in recent years has highlighted how difficult it is to navigate between the competing interests of individual freedom and privacy and the safety of our communities — particularly our children. According to the National Committee for the Prevention of Child Abuse, 405 000 cases of child sexual assault were reported in 1991.[4] Indeed, the actual number of children victimized is difficult to assess since many of these crimes go unreported.[5] The median sentence for a convicted child sex offender in the United States is between 11 and 15 years.[6] This does not account for early release and parole which can substantially reduce the time actually served.

Most of these statutes cover people convicted of sex offenses against adults as well as children. In the United States, 97 464 forcible rapes were reported to law enforcement agencies during 1995.[7] Despite the vast reform in rape laws, studies suggest that many rapes, particularly those committed by acquaintances and friends, go unreported.[8] Given the ineffectiveness of the criminal justice system in curbing sexual offenses, women's and children's advocacy groups have lobbied lawmakers to

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[4]139 Cong. Rec. H10, 322 (daily ed. 20 November 1993) (statement of Rep. Hobson).

[5]T.J. Reed, "Reading Gaol Revisited: Admission of Uncharged Misconduct Evidence in Sex Offender Cases" (1993) 21 Am. J. Crim. L. 127 at 150-151.

[6]U.S. Department of Justice, *Child Victimizers: Violent Offenders and their Victims* by L.A. Greenfeld (Washington D.C.: U.S. Department of Justice, 1996) at 8 (finding that the median sentence for an offender convicted of violence against a child was 11 years. For rape of a child, the median sentence is 15 years).

[7]Federal Bureau of Investigation, *Uniform Crime Reports 1995* (Washington, D.C.: U.S. Department of Justice, 1995) at 25.

[8]See generally, L. Fairstein, *Sexual Violence: Our War Against Rape* (New York: Berkley Books, 1993).

develop strategies to combat the growing problem of sexual violence.[9] There have been four predominant policy schemes developed: registration statutes, community notification statutes, federal sex offender statutes and civil commitment statutes.

1. State Registration Statutes

State registration statutes have been passed in at least forty-six states.[10] These statutes oblige convicted sex offenders to provide local law enforcement officials with photographs, fingerprints, their home address, social security number, their date and place of birth and the dates and places of their previous convictions.[11] This information is intended to aid law enforcement officials in monitoring sex offenders released into the community, as well as provide a data bank of potential suspects when future crimes are committed.[12] Other states have passed laws requiring sex offenders to provide blood samples.[13] These samples are DNA screened and filed into the state's criminal justice data bank and later used to help identify and apprehend repeat sexual offenders. Failure to register can result in penalties such as fines and incarceration.

2. State Community Notification Statutes

At least seventeen states have enacted community notification statutes which either allow or require law enforcement agents to distribute information to the public about convicted sex offenders who have been released back into the community.[14] New Jersey responded to the death of Megan Kanka by passing "Megan's Law". This comprehensive legislation mandates that sex offenders register with law enforcement authorities, provides procedures for community notification,[15] and allows for lifetime

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[9]Many of these laws were passed in the wake of highly publicized cases, like that of Megan Kanka. For example, Indiana enacted "Zachary's Law" after Christopher Stevens, a convicted child molester, molested and murdered ten year old Zachary Snider. "Child Molester Registry Spurs Questions" *Indianapolis Star* (10 July 1994) B03.

[10]M.L. Earl-Hubbard, "The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s" (1996) 90 Nw.U.L.Rev. 788 at 790.

[11]See *e.g.* "Prevention versus Punishment: Toward a Principled Distinction in the Restraint of Released Sex Offenders" (1996) 109 Harv. L. Rev. 1711 at 1713 (describing typical sex offender statutes) [hereinafter Prevention versus Punishment].

[12]Earl-Hubbard, *supra* note 10 at 795-796.

[13]See *e.g.* Conn. Gen. Stat. § 54-102(g) (1995); Or. Rev. Stat. § 137.076, 181.085 (1995).

[14]See Earl-Hubbard, *supra* note 10 at 808.

[15]N.J. Stat. Ann. § 2C:7-1 to 2C:7-8 (West 1995 & Supp. 1996).

community supervision of sex offenders.[16] Although the case of Megan Kanka is perhaps the most well known of these tragedies,[17] Washington was actually the first state to enact legislation specifically designed to effect greater control over repeat sex offenders.[18] However, New Jersey was the first state to mandate community notification as compared to merely authorizing public access to such registration information.[19]

While the contents of these laws vary, several are modelled after "Megan's Law", which requires authorities to publicize registration data to particular segments of the community based on the offender's risk of recidivism. For those with a low risk of re-offending, only those law enforcement agencies likely to encounter the released offender are notified. For those at moderate risk of re-offending, organizations in the community, including schools, religious and youth organizations, are notified. For those with the highest risk of re-offending, police must notify everyone who may encounter the offender.[20] While the law applies statewide, local prosecutors maintain broad discretion in determining whether a person is likely to re-offend.

In Washington state, the community is notified of the presence of released offenders if local law enforcement determines that it is necessary for "public protection".[21] Police have used a variety of means to inform residents of the presence of sex offenders including newspaper articles, community meetings and posters.[22] In Louisiana, those convicted of crimes against victims under eighteen must send notices of their name, address, and the crime committed to people who live within a one mile radius in rural areas and a three square block radius in suburban or urban areas. Convicted offenders must also publish this information in a local newspaper. In addition, courts are permitted to order sex offenders to provide

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[16]N.J. Stat. Ann. § 2C:43-6.4 (West 1995).

[17]Megan Kanka's alleged killer, Jesse Timmendequas, is facing the death penalty. He has argued that prospective jurors with any knowledge of "Megan's Law" should be barred from the jury as they would know that he had been convicted of similar crimes before. This type of evidence is generally barred in the American legal system. His trial raises questions about whether courts can fairly try someone charged with a crime that is so notorious that the name of the victim has become part of the national vocabulary. W. Glaberson, "Megan Jury Issue: Is Name a Taint?" *The New York Times* (12 January 1996) s. 1 at 1.

[18]Wash. Rev. Code § 9A.44.130-9A.44.140 (1996) (includes a sex offender registration as part of its *Community Protection Act*) and Wash. Rev. Code § 71.09.010-71.09.902 (1995) (which provides for the civil commitment of those found to be "sexually violent predators").

[19]N.J. Stat. Ann. § 2C:7-6 (West 1995).

[20]N.J. Stat. Ann. § 2C:7-8(c) (West 1995).

[21]Wash. Rev. Code § 4.24.550(1) (1996) (authorizing public agencies to release information relevant and necessary for public protection).

[22]G. S. Rafshoon, "Community Notification of Sex Offenders: Issues of Punishment, Privacy and Due Process" (1995) 44 Emory L.J. 1633 at 1640.

neighbours with notice in the form of signs, handbills, bumper stickers, or through having the offender wear descriptive clothing.[23] In California, members of the public can call a "900" telephone number to determine whether specific individuals are registered as sex offenders. By providing the name of the offender, callers can obtain information about the individual's physical description, town of residence, zip code and past crimes.[24]

3. Federal Sex Offender Statutes

In the fall of 1994, the U.S. federal government enacted the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act*. The law is named after Jacob Wetterling, an eleven year old boy who was taken at gunpoint as he went to rent a video in his St. Joseph Minnesota neighbourhood— never to be seen by his family again. Jacob's parents lobbied Congress intensely to pass laws that would require sex offenders and violent offenders whose victims were children to register with police and would allow police to publicize the presence of such offenders in the communities where they live.

The Act establishes guidelines for state registration and notification statutes. States which do not implement such programs forfeit ten percent of their share of federal grants for law enforcement.[25] In May of 1996, the guidelines under the Act were toughened when President Clinton signed the federal version of "Megan's Law". The amendment now *requires*, rather than simply allows, states to notify the community of dangerous sex offenders.[26]

Recently, Congress passed the *Pam Lynchner Sex Offender Tracking and Identification Act*.[27] Pam Lynchner was also a victim of attempted sexual assault. She survived and went on to found Justice for All, a Houston-based victims' rights organization. Sadly, Lynchner and her two young daughters were among the victims of TWA Flight 800 which crashed near Long Island, New York on 17 July 1996.

This Act establishes a Federal Bureau of Investigation (FBI) database. All states which have sex offender registration laws must now report certain information directly to the FBI. It also requires convicted sex offenders who reside in states without registration laws to directly provide the FBI with information. Sex offenders

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[23]La. Rev. Stat. Ann. § 15:542 (West Supp. 1997); La. Code Crim. Proc. Ann. art. 895(h)(2) (West Supp. 1997).

[24]Cal. Penal Code § 290-290.7 (West 1988 & Supp. 1997).

[25]42 U.S.C. § 14071(f)(2)(A),(B) (1994).

[26]42 U.S.C. § 14071(d) (1994).

[27]Pub. L. No. 104-236, 110 Stat 3093 (1996).

are required to register and report their whereabouts for a minimum of ten years beyond their release from prison. If the offender is convicted more than once, convicted of aggravated assault, or determined to be a sexually violent predator, then he is subjected to the registration requirement for life. Furthermore, the FBI itself may release any relevant information about registered sex offenders that is "necessary to protect the public". The Federal scheme is intended to close loopholes through which convicted sex offenders can escape if they live in states which refuse to pass registration and notification laws.

4. Civil Commitment Statutes

Finally, some states have passed civil commitment statutes which allow state officials to identify potentially dangerous offenders and commence proceedings to have them confined indefinitely, even after their prison terms expire.[28] For example, Kansas' *Sexually Violent Predator Act* provides for civil commitment and long-term care and treatment of persons found to be "sexually violent predators". The sexually violent predator must satisfy two criteria: he must be suffering from either a "mental abnormality" or a "personality disorder", and he must present a continuing danger to society due to his likelihood of re-offending. The Kansas statute targets those individuals who pose an immediate danger to the community upon their release from prison. The intent is to provide treatment and commitment until the sexually violent predator is no longer dangerous.

II. The Debate Surrounding Sex Offender Laws

Underlying these statutes is the premise that sex offenders pose a special danger to the community. In particular, proponents of these laws cite evidence that sex offenders exhibit higher rates of recidivism than other types of offenders[29] and that treatment is ultimately ineffective.[30] Providing the community with information is intended to give them a means of protecting potential victims.

Because of the publicity surrounding cases like Megan Kanka's, there is a growing frustration among the American public about the continued threat that certain

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[28]See *e.g.* Wash. Rev. Code § 71.09.030-71.09.060 (1996); Kansas' *Sexually Violent Predator Act*, Kan. Stat. Ann. § 59-29a01 *et seq.* (1994 & Supp. 1996).

[29]See 139 Cong. Rec. H10, 320 (daily ed. 20 November 1993) (Statement of Rep. Sensenbrenner citing to higher rates of recidivism among sex offenders); N.J. Stat. Ann. § 2C:7-1 (West 1995) (New Jersey state legislature's findings in passing "Megan's Law").

[30]L. Furby, M.R. Weinrott & L. Blackshaw, "Sex Offender Recidivism: A Review" (1989) 105 Psychol. Bull. 3 at 25 (suggesting that sex offenders continue to offend even after incarceration or clinical treatment).

released offenders pose. These laws address the sense of community powerlessness in a symbolic way. Communities, via their legislatures, have resolved the dilemma of choosing between protecting the privacy of individuals released from prison and promoting the public's right to know who these people are in favour of public rights. We should not underestimate the power or impact of this shift. Historically, sex crimes have been considered private. In many cases, these crimes were not prosecuted, allowing sex offenders to continue victimizing women and children with impunity. Our attitudes about sex crimes, including rape and child sexual abuse, have changed dramatically. Today, those who commit these crimes are subject to a range of public accountability as well as a growing sense of public scorn for their behaviour. Thus, in the long term, publicizing these crimes may deter this behaviour as well as give communities a greater sense of control.

Opponents of these laws argue that they substantially infringe the civil liberties and privacy rights of offenders who have already served their prison sentences. This infringement of individual freedom is considered unjustifiable, particularly in light of the perceived ineffectiveness of these laws. Critics cite studies which claim that sex offenders do not recidivate at higher rates than other criminals and are ultimately treatable.[31] They further argue that notification statutes will drive sex offenders underground, making them less likely to seek treatment or to stop re-offending. Some have even suggested that the added stress of continuous community supervision after release from prison increases the likelihood that sex offenders will re-offend, particularly if they are unable to resume a normal life.[32] For example, in 1992, in Washington, Jerry Sharp was released from a five year sentence for raping a thirteen year old boy. He had been out of jail and living with his parents for several weeks when the local police told him that his community would be notified of his presence. That evening, the local news station displayed his photo. Sharp saw the broadcast and went on a rampage, eventually picking up a developmentally challenged boy at a bowling alley. Two witnesses dragged the boy out of Sharp's car just as he was about to drive away.[33]

Critics are further concerned with the vigilante justice that has occurred since these laws were passed. For example, when Joseph Gallardo was released from prison for the rape of a ten year old girl, a Washington sheriff posted fliers which labelled Gallardo "an extremely dangerous untreated sex offender with a very high

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[31]See generally, G.D. Shelton, *Sex Offender Treatment as an Alternative to Notification Laws: A Proposal of Legislation in Vermont*, [unpublished].

[32]J.K. Marques & C. Nelson, "Elements of High-Risk Situations of Sex Offenders" in D.R. Laws, ed., *Relapse Prevention with Sex Offenders* (New York: Guilford, 1989) 35 at 38.

[33]D. Golden, "Sex-Cons" *Boston Globe Magazine* (4 April 1993) 12.

probability for reoffense."[34] Residents in the neighbourhood held a rally to protest his arrival, and Gallardo's house was burned down. In New Jersey, a jail guard and his father broke into the family home of Michael Groff, a released sex offender subject to community notification. The men attacked a person that they mistook for Groff, saying that they were looking for a child molester.[35] While there have been isolated incidents of violence and harassment directed against sex offenders, states with community notification statutes have made it clear that such acts of vigilante justice will be prosecuted.[36]

The legislative approaches described above have also raised a number of federal and state constitutional challenges with surely more to come. Scholars and commentators have suggested that these laws violate both the Eighth Amendment guarantee against cruel and unusual punishment, and the procedural and substantive due process rights guaranteed under the Fifth and Fourteenth Amendments.[37] For example, "Megan's Law" has been challenged on the basis of its retroactive application.[38] The United States Supreme Court recently heard arguments challenging the constitutionality of Kansas' *Sexually Violent Predator Act*.[39]

As these various statutes are scrutinized by the judiciary, we shall see the extent to which courts are willing to invalidate them on constitutional grounds. However, given today's political climate and the growing concern about sex crimes, it is unlikely that the courts will entirely reject these schemes as unconstitutional. Traditional law enforcement has not proven very effective in curbing sexual violence. The truth is, we do not know if these statutes will provide anything but a false sense of security. Like any public policy measure, it simply takes time to assess the

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[34]See D. Conner, "Did Flier on Sex Offender's Release Invite Vigilantism?" *The Los Angeles Times* (22 July 1993) A5.

[35]See J. Nordheimer, "'Vigilante' Attack in New Jersey is Linked to Sex-Offenders Law" *The New York Times* (11 January 1995) A1.

[36]For example, the Attorney General of New Jersey has made clear that in implementing Megan's Law, anyone involved in acts of vigilantism or harassment will be prosecuted. E.A. Goodman, "Megan's Law: The New Jersey Supreme Court Navigates Uncharted Waters"(1996) 26 Seton Hall L. Rev. 764 at 798.

[37]See generally, Earl-Hubbard, *supra* note 10 at 814-848 (discussing various constitutional challenges to sex offender registration laws); C. L. Lewis, "*The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act*: An Unconstitutional Deprivation of the Right to Privacy and Substantive Due Process" (1996) 31 Harv. C.R.-C.L.L. Rev. 89 (arguing that the magnitude of the collective infringement on several important individual liberty interests casts serious doubt on the constitutionality of the *Jacob Wetterling Act*).

[38]See *Doe* v. *Poritz*, 661 A. 2d 1335 (N.J. Super. Ct. Law Div. 1995) aff'd, 662 A.2d 367 (N.J. 1995) (holding that registration and community notification laws did not violate the several constitutional challenges raised by the appellant, including protection from *ex post facto* laws, bills of attainder, double jeopardy and cruel and unusual punishment, or privacy infringement).

[39]*Kansas* v. *Hendricks*, 912 P. 2d 129 (1996), cert. granted 116 S. Ct. 2522 (1996).

outcomes. If we find that these schemes realize no appreciable benefit, or come at too high a cost to individual liberty and freedom, then we can search for other solutions.[40]

III. Privacy — The Real Danger

One good thing about these initiatives has been the public awareness they have brought to the issues of sexual abuse and violence. Nevertheless, we ought not to divert our attention from a more serious problem as we wait to measure the effectiveness and constitutionality of these laws. As one author has said,

> [T]his 'Stranger-Danger' — the pedophile lurking in the bushes of a school yard — is not the greatest threat to children. The real danger is not lurking or hiding, but walking alongside our children every day, often sitting with them at the breakfast table or in their classrooms and churches.[41]

Of those offenses actually reported, as many as ninety percent are committed by family members or friends of the victim.[42] If we put half of the time, energy and resources into family violence as we have towards stranger violence, we might actually see real progress.

One of the predominant reasons sexual abuse is not reported when the perpetrator is someone we know is that we think of these instances as private family matters. At the heart of the right to privacy in America is the concept that personal privacy and dignity are protected from unwarranted state intrusion. When sexual abuse and violence happens within the home, there is often a deep reluctance to view this as a public crime which warrants public intervention.

In many of these cases, it is not just the child who is being abused, but the mother as well. Women often blame themselves for the abuse of their children. They deny that someone they know and love could do this. They fear the shame and embarrassment that would result if their neighbours and friends knew. They might mistrust the criminal justice system's ability to effectively intervene and, often, while they might want the abuse to stop, they do not want to break up their families. Also, in the United States, adequate resources to aid families in crisis are still lacking. Prosecutors are often reluctant to go forward with cases when the abuser is a family

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[40]Some have suggested chemical or surgical castration as an alternative traditional treatment. See for example D. McLemore, "Group Says it has Deal with Parolee, Victims' League Cites Castration Documents" *Dallas Morning News* (11 April 1996) 1A (discussing the case of child molester Larry Don McQuay who requested a surgical castration to stop his re-offending).

[41]Earl-Hubbard, *supra* note 10 at 851.

[42]Greenfeld, *supra* note 6 at 11 (finding that fewer than 10% of inmates serving time for rape or sexual assault of a child report that the victim had been a stranger to them).

member, viewing these cases as less serious than "stranger cases". Furthermore, prosecutors often consider these cases too difficult to prosecute unless the victim and her family are willing witnesses. Even in those prosecuted cases where jail would be an appropriate punishment if the victim were a stranger, treatment and family therapy are often imposed instead.

Furthermore, under most sex offender statutes, the definition of "dangerous", "high-risk" or "long-term" offender remains vague. Given the history of these laws, however, it is clear that the drafters of these bills envisioned lurking pedophiles or serial rapists — predators who randomly select their victims. Nowhere in New Jersey's "Megan's Law", for example, is there reference to the parent or family member who might be an offender. In Kansas' *Sexually Violent Predator Act*, "predatory" is defined as "acts directed towards strangers or individuals with whom relations have been established or promoted for the primary purpose of victimization."[43] This definition would not cover a family member, close friend, teacher, or day care worker who has an ongoing relationship with the victim. Even when family members and friends are reported and convicted, it is unclear whether law enforcement officials would determine it to be in the interests of the community to notify the public of these offenders' whereabouts. Thus, despite the enactment of sex offender laws, there is still a clear lingering public/private distinction based on the relationship between the victim and the offender. Unless we are willing to resolve this dilemma in favour of the public, the vast majority of these offenders will go unprosecuted and unsupervised.

This public/private dilemma became clear to me while prosecuting domestic violence crimes. Pictures of a two year old boy were attached to a file for sexual and physical abuse. The boy had severe bruising to his genital area, as well as cuts and scratches all over his body. His mother had taken him to the hospital claiming he had fallen from a bed. Upon investigation, we learned that her boyfriend was responsible for the abuse. In checking her boyfriend's police record, I found that he had been arrested for beating his girlfriend numerous times as well as other alleged incidents of sexual and physical abuse on other children. None of the cases had ever been prosecuted due to "victim's lack of cooperation".

I proceeded with the case in the hope that the mother would cooperate in prosecuting her boyfriend for the horrible things he had done to her son. She requested that I drop the charges and refused to testify. From her perspective, she had more to lose than to gain by proceeding. Underlying her fear and reluctance was a deeper sense that what was happening in her family was a private matter, and that the state had no right to intervene and break up her home. Unfortunately, she disappeared after social services removed her son from her custody. Because of her disappearance, there was not enough evidence to prosecute her boyfriend. Without a

[43]Kan. Stat. Ann. § 59-29a02(c) (1994 & Supp. 1996).

conviction, the state had no authority to mandate that he seek treatment or to detain him. Unless he was convicted and found to be a "dangerous offender", he would not be subject to "Megan's Law". I often wonder who he is abusing now.

This case illustrates the difficulty of acknowledging that our children can be at highest risk from those we love. It also illustrates that curbing sexual abuse of women and children will come at some costs, particularly to individual freedom and autonomy. Ultimately, if choosing between our family's right to be left alone or the physical and mental safety of the victim, the better choice is the latter. No matter what privacy interests we might give up, none outweigh the harm and potential risk of death inflicted by ongoing sexual violence.

We need to take cases of sexual violence in families more seriously. Prosecuting cases of family violence and abuse can be difficult, not only due to the reluctance of victims to cooperate, but also due to the lack of investigation that can lead to independently sufficient evidence. Nevertheless, if we aggressively prosecute these cases, remove the veil of secrecy to obtain convictions, and increase the penalties for abuse, domestic violence and rapes of all kinds, we will likely see a reduction in these crimes. This would move us one step closer to breaking the cycle of violence and abuse.[44] Many sex offenders have been abused as children, most by a parent or guardian.[45] While this does not excuse their behaviour, it certainly helps explain why simply targeting strangers is not enough to have a long-term impact on the future safety of our children.

Safe communities must have safe homes. To ensure this safety, we have to rethink what privacy means and start viewing sexual abuse and violence as a public problem which calls for public solutions. Ultimately, we have to acknowledge that aggressive law enforcement strategies offer no guarantee that dangerous offenders will stop re-offending or that all of our children will be better off, but we can try. Otherwise, the cost of sexual violence — from both strangers and those we know — is simply too high a price to pay. Finally, no legislative scheme will completely stop all the sexual and violent abuse of women and children. Accepting the limits of these strategies may be the hardest part of all.

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[44]See C. Hanna, "No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions" (1996) 109 Harv. L. Rev. 1849.

[45]Greenfeld, *supra* note 6 at 7 (reporting that 22% of incarcerated child victimizers have reported being sexually abused themselves. For nine out of ten violent offenders experiencing prior physical or sexual abuse, the abuser was someone that they had known.) See also N.R. Cahn, "Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions" (1991) 44 Vand. L. Rev. 1041 at 1055-56.