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Megan's Law and Sarah's Law: A Comparative Study of Sex Offender Community Notification Schemes in the United States and the United Kingdom

*Kate Blacker and Lissa Griffin**

I. INTRODUCTION

Sexual assault is a devastating social problem. It has also become a highly publicized issue.¹ Pedophiles, rapists, child molesters and other sex offenders are both loathed and feared. Convicted sex offenders are also believed to reoffend at high rates.² Interestingly, the United States and the United Kingdom have had different responses to the public's fear of recidivist sex offenders. Legislators in the United States created the Sex Offender Registry and Megan's Law³ in an effort to protect communities, and children in particular, from convicted sex offenders.⁴ Megan's Law was recently strengthened by both the Adam Walsh Act of 2006⁵ and the Dru Sjodin National Sex Offender Public Registry.⁶ There is now free, public access to a national website where

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¹See Timothy Fortney, Jill Levenson, Yolanda Brannon & Juanita N. Baker, *Myths and Facts about Sexual Offenders: Implications for Treatment and Public Policy* (2007), available at <http://www.sexual-offender-treatment.org/55.html>.

²See Mercedes Perez, *Sex Offender Information Registries and the Not Criminally Responsible Accused: Have We Cast Too Wide a Net?*, 25 Windsor Rev. Legal & Soc. Issues 69, 71 (2008).

³Megan's Law is a community notification statute mandating law enforcement disseminate information about sex offenders to the public. See Lara Geer Farley, *The Adam Walsh Act: The Scarlet Letter of the Twenty-First Century*, 47 Washburn L.J. 471, 473 (2008).

⁴See Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended, 64 FR 572 (1999).

⁵See Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472) (2006).

⁶Farley, *supra* note 3, at 475-76.

identifying information on registered sex offenders in the United States is available.⁷

The United Kingdom developed a sex offender register and Sarah's Law⁸ in an effort to keep communities safe from sex offenders. However, Sarah's Law is quite different from Megan's Law, particularly because there is no direct public access to the United Kingdom's Sex Offender Register.⁹

Part II of this article analyzes the history of sex offender registration and community notification under Megan's Law in the United States. Part III examines the United Kingdom's approach to sex offender registration and community notification via Sarah's Law. Part IV explores the distinctly different approaches to community notification in the United States and the United Kingdom.

II. THE U.S. SEX OFFENDER REGISTRY AND COMMUNITY NOTIFICATION SCHEME

A. History of the Registry

In 1994, Congress enacted the Wetterling Act in response to eleven-year-old Jacob Wetterling being kidnapped by an unknown gunman.¹⁰ The Wetterling Act recommended minimum standards for states' sex offender registry programs. In addition, it addressed which crimes would make an offender eligible for registration, the length of time offenders should remain on the registry, and methods of database maintenance. The statute was enacted in an effort to maintain sex offenders and protect the public.¹¹ All fifty states soon created some form of sex offender registrations.¹² State registration statutes generally require, at a minimum, that sex offenders provide law enforcement

⁷See Dru Sjodin National Sex Offender Public Website, available at <http://www.nsopr.gov/>.

⁸Sarah's Law is a community notification scheme in the United Kingdom designed to protect the community from child sex offenders.

⁹See, e.g., Sarah Manners, Registered sex offenders in Wales rise 6.6% to 1,925, *Western Mail*, Oct. 23, 2008, at 14; Samantha Payne, Rape kid law plea, *News World*, Oct. 12, 2008, at 7; Samantha Robertson, Sex offender scheme will 'create climate of mistrust', available at http://www.kentonline.co.uk/kol08/article/default.asp?article_id=48096 [hereinafter Payne, Sex offender scheme].

¹⁰See Farley, *supra* note 3, at 474; Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (2006).

¹¹See Farley, *supra* note 3, at 474; Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (2006).

¹²All fifty states have enacted their own versions of "Megan's Law," a sex offender registration and notification provision. See Ala. Code §§ 13A-11-200 to -203 (1994); Alaska Stat. §§ 12.63.010 to .100 (Michie 2004); Ariz. Rev. Stat. Ann. §§ 13-3821 to -3827 (West 2001); Ark. Code Ann. §§ 12-12-901 to -920 (Michie

with their home address, fingerprints, social security numbers, photographs, and information on their prior convictions.

B. Community Notification — Megan's Law

The year the Wetterling Act was enacted, 1994, was also the year that seven-year-old Megan Kanka was raped and murdered by a neighbor who had been twice-convicted as a sex offender.¹³ Megan's parents had no knowledge of their neighbor's prior convictions.¹⁴ Not surprisingly, community notification issues came to the forefront after Megan was killed. It was no longer enough to have sex offenders register with police. Members of the community demanded to be informed if sex offenders resided in their neighborhoods.

New Jersey (the state where Megan was murdered) enacted Megan's Law eighty-nine days after the little girl's death. The law

2003); Cal. Penal Code §§ 290 to 290.9 (West 1999); Colo. Rev. Stat. § 18-3-412.5 (2004); Conn. Gen. Stat. Ann. §§ 54-250 to -261 (West 2001); Del. Code Ann. tit. 11, § 4120 (2001); Fla. Stat. Ann. § 775.21 (West 2005); Ga. Code Ann. § 42-1-12 (1997 & Supp. 2004); Haw. Rev. Stat. Ann. § 846-E (Michie Supp. 1997); Idaho Code §§ 18-8301 to -8311 (Michie 1997); 730 Ill. Comp. Stat. Ann. 5/3-3-11.5 (West 1997); Ind. Code Ann. § 5-2-12 (West Supp. 1997); Iowa Code Ann. § 692.A (West Supp. 1998); Kan. Stat. Ann. §§ 22-4901 to -4910 (1995); Ky. Rev. Stat. Ann. §§ 17.500-.540 (Michie 1996); La. Rev. Stat. Ann. §§ 540 to 549 (West Supp. 1998); Me. Rev. Stat. Ann. tit. 34-A, §§ 11001 to 11144 (West Supp. 1997); Md. Ann. Code art. 27, § 792 (1996 & Supp. 1997); Mass. Gen. Laws ch. 6, §§ 178D-Q (1996); Mich. Comp. Laws Ann. §§ 28.721 to .732 (West Supp. 1997); Minn. Stat. Ann. § 243.166 (West 1992 & Supp. 1998); Miss. Code Ann. §§ 45-33-21 to -57 (2001); Mo. Ann. Stat. §§ 589.400 to .425 (West Supp. 1998); Mont. Code Ann. §§ 46-23-501 to -520 (1997); Neb. Rev. Stat. §§ 29-4001 to -4013 (Supp. 1996); Nev. Rev. Stat. §§ 207.151 to .157 (1997); N.H. Rev. Stat. Ann. §§ 651-B:1 to :10 (Supp. 1997); N.J. Stat. Ann. §§ 2C:7-1 to -9 (West 2004); N.M. Stat. Ann. §§ 29-11A-1 to -8 (Michie 1997); N.Y. Correct. Law §§ 168-a to -v (Consol. Supp. 1998); N.C. Gen. Stat. §§ 14-208.5 to .32 (Supp. 1997); N.D. Cent. Code § 12.1-32-15 (Supp. 1997); Ohio Rev. Code Ann. § 2950 (Anderson 1996 & Supp. 1997); Okla. Stat. Ann. tit. 57, §§ 581 to 588 (West 1991 & Supp. 1999); Or. Rev. Stat. §§ 181.594 to .608 (2003); 42 Pa. Cons. Stat. Ann. §§ 9791-9799.7 (West Supp. 2004); R.I. Gen. Laws §§ 11-37.1-1 to -20 (1996); S.C. Code Ann. §§ 23-3-400 to -530 (Law Co-op. Supp. 1999); S.D. Codified Laws §§ 22-22-31 to -41 (Michie Supp. 1997); Tenn. Code Ann. §§ 40-39-201 to -211 (Supp. 2004); Tex. Rev. Civ. Stat. Ann. art. 4413(51) (Vernon Supp. 1998); Utah Code Ann. § 77-27-21.5 (1995 & Supp. 1997); Vt. Stat. Ann. tit. 13 §§ 5401 to 5414 (Supp. 2002); Va. Code Ann. §§ 9.1-901 to -920 (Michie 1995 & Supp. 1997); Wash. Rev. Code Ann. §§ 9A.44.130 to .145 (West 2000); W. Va. Code §§ 15-12-1 to -10 (1999); Wis. Stat. Ann. §§ 301.45 to .46 (West 2005); Wyo. Stat. Ann. §§ 7-19-301 to -307 (Michie 2003); D.C. Code Ann. §§ 22-4001 to 4017 (2001).

¹³ See *State v. Timmenedequas*, 161 N.J. 515, 737 A.2d 55 (1999).

¹⁴ See Jennifer G. Daugherty, *Sex Offender Registration Laws and Procedural Due Process: Why Doe v. Department of Public Safety Ex Rel. Lee Should be Overturned*, 26 Hamline L. Rev. 713, 715 (2003).

called for community notification of registered sex offenders.¹⁵ In 1996, Congress acknowledged the importance of community notification by enacting a federal version of Megan's Law, which amended the Wetterling Act. The Law permits public dissemination of sex offenders' registration information.¹⁶ The objective of Megan's Law is "to assist law enforcement and protect the public from convicted child molesters and violent sex offenders through requirements of registration and appropriate release of registration information."¹⁷ Megan's Law mandates that each state implement community notification procedures¹⁸ but does not specify any particular manner in which they should do so. As a result, community notification varies throughout the states and may include such methods as press releases, flyer distribution, and the Internet.¹⁹

C. Community Notification — Additional Legislation

In 2005, the Department of Justice developed a national sex offender database on the Internet. The website was created in an effort to provide easier access to all fifty states' individual sex offender databases.²⁰ The following year, the website was renamed the Dru Sjojin National Sex Offender Public Registry; the website's namesake

¹⁵See Registration and Notification of Release of Certain Offenders Act, N.J. Stat. Ann. §§ 2C:7-1 (1995).

¹⁶See Alex B. Eyssen, Does Community Notification for Sex Offenders Violate the Eighth Amendment's Prohibition Against Cruel And Unusual Punishment? A Focus on Vigilantism Resulting From "Megan's Law, 33 St. Mary's L.J. 101, 105 (2001).

¹⁷See Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended, 64 FR 572 (1999).

¹⁸See Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071(e)(2) (2006).

¹⁹In Louisiana, an offender's picture, name, address, and conviction information is printed in the local news article. See Louisiana Revised Statutes; Notification of Sex Offenders and Child Predators LSA-R.S. 15:542.1 (A)(2)(a) (2008)]. In Oklahoma, "[u]pon registration of any person designated as a habitual or aggravated sex offender . . . a local law enforcement authority shall notify, by any method of communication it deems appropriate anyone that the local law enforcement authority determines appropriate" Oklahoma Sex Offender Registration Act, 57 Okl.Stat. Ann. § 584 (J)(3)(2008). In Alabama, a community notification flyer is mailed or hand delivered to all residents living nearby a registered sex offender. The flyer may also be posted in the local police station and published in the local newspaper and on the Internet. See Adult criminal sex offender — Community notification procedures Ala. Code § 15-20-25 (2008)].

²⁰See Farley, *supra* note 3, at 475-76.

was yet another victim of a convicted sex offender who was not listed on any sex offender registry.²¹

The Adam Walsh Act was enacted by Congress in 2006 to further improve upon the Wetterling Act; its namesake was a six-year old boy who was kidnapped and murdered in 1981.²² The stated purpose of the Act is "to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims."²³ The Adam Walsh Act created a more comprehensive guideline for the nationwide registration of sex offenders by establishing specific guidelines for state registries and authorizing a nationwide sex offender registry.²⁴ The Act mandates conformity among the states with respect to internet sex offender registration in an attempt to eliminate loopholes that may have been inadvertently created by incongruent state statutes.²⁵ It calls for a national sex offender registry that integrates the sex offender information from each state.²⁶ Every sex offender must provide specific information including the offender's name, social security number, address of each and every residence, the name and address of the offender's school and/or place of employment, and a description of any vehicle owned or operated by the offender as well as the corresponding license plate numbers. The jurisdiction in which the sex offender lives must also provide the following information for the registry: a physical description of the offender, the offender's criminal history, the dates of all arrests and convictions, the offender's status (be it parole, probation, etc.), an updated photograph of the offender, fingerprints and palm prints, a DNA sample, and a copy of their driver's license or identification card.²⁷

The Adam Walsh Act differentiates between risk levels of sex offenders via a three tier system; the higher the tier, the more serious the nature of the conviction. The length of time offenders must remain on the registry is based on their tier and ranges from fifteen years up

²¹Farley, *supra* note 3, at 475-76.

²²Farley, *supra* note 3, at 480.

²³Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472) 42 U.S.C.A. § 16911 (2006).

²⁴See Christina Locke & Dr. Bill F. Chamberlin, *Safe From Sex Offenders? Legislating Internet Publication of Sex Offender Registries*, 39 Urb. Law. 1, 4-5 (2007).

²⁵See Farley, *supra* note 3, at 481.

²⁶Farley, *supra* note 3, at 484.

²⁷See Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472), 42 U.S.C.A. § 16911 (2006).

to lifetime registration.²⁸ Sex offenders must register before finishing their prison sentences. Offenders who are not sentenced to incarceration must register within three days after being sentenced.²⁹ Sex offenders must periodically appear in person to have an updated photograph taken and ensure that all information on the registry is current. Offenders must appear every year, six months, or three months based upon their tier classification.³⁰ An offender who knowingly fails to register faces a fine or federal imprisonment of up to ten years.³¹ A properly registered offender who travels to a new state and fails to re-register faces the same consequences.³²

D. U.S. Supreme Court Decisions

In 2003, the Supreme Court upheld the constitutionality of Connecticut's Sex Offender Registries and Community Notification Law. In *Connecticut Department of Public Safety v. Doe*,³³ convicted sex offenders claimed that Connecticut's version of Megan's Law³⁴ violated the Due Process Clause of the Fourteenth Amendment. The sex offenders argued that because all individuals convicted of a sex crime must register under the Connecticut law, the statute violated their procedural due process rights because it failed to establish which sex offenders were actually dangerous to the public.³⁵ The U.S. Supreme Court held that sex offenders are not entitled to a hearing to determine whether they are currently dangerous before being included in the

²⁸ Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472), 42 U.S.C.A. § 16911 (2006).

²⁹ See 42 U.S.C. § 16913(b)(2).

³⁰ See Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472), 42 U.S.C.A. § 16911 (2006).

³¹ Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472), 18 U.S.C.A. § 2250.

³² See Applicability of the Sex Offender Registration and Notification, 72 Fed. Reg. 8894, 8895 (Feb. 28, 2007).

³³ *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003).

³⁴ Connecticut's version of Megan's Law requires convicted sex offenders to register with the Department of Public Safety (DPS). DPS is required to maintain a publicly accessible Internet sex offender registry containing registrants' names, addresses, photographs, and descriptions. See Conn. Gen. Stat. § 54-256, 54-257 (2008).

³⁵ See Kimberly B. Wilkins, Sex Offender Registration and Community Notification Laws: Will These laws Survive?, 37 U. Rich. L. Rev. 1245, 1258-59 (2003).

public sex offender registry; the sex offenders' conviction alone is sufficient to include them on the registry.³⁶

In 2003, the Supreme Court also upheld the constitutionality of Alaska's version of Megan's Law.³⁷ In *Smith v. Doe*,³⁸ convicted sex offenders challenged the constitutionality of Alaska's Sex Offender Registration Act as a violation of the Ex Post Facto Clause of the U.S. Constitution³⁹ because they were required to register several years after being released from prison.⁴⁰ The *Smith* Court held that the registration and notification requirements were preventative, not punitive, and therefore did not violate the Ex Post Facto Clause. The Court acknowledged the public shame that accompanied Internet notification, but maintained that "[t]he purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the offender. Widespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation."⁴¹

Right to privacy claims against sex offender registration and community notification laws have also failed. In *Doe v. Poritz*, the New Jersey Supreme Court determined that neither its state's sex offender registration nor community notification laws⁴² violated a sex offenders' right to privacy under either the Federal or New Jersey State Constitution.⁴³ The court focused on the "danger of recidivism"⁴⁴ and

³⁶ See *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1, 7, 123 S. Ct. 1160, 155 L. Ed. 2d 98 (2003).

³⁷ The Alaska Sex Offender Registration Act consists of both a registration requirement and a notification system. After sex offenders register with the state, much of their information is made available on a publically accessible website including their names, aliases, photographs, places of employment, dates of birth, and the names and dates of their convictions. See Alaska Stat. § 12.63.010 (2000).

³⁸ *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003).

³⁹ The Ex Post Facto Clauses of the United States Constitution guarantees against arbitrary and capricious retroactive legislation; see U.S. Const. art. I, § 9, cl. 3 ("No Bill of Attainder or ex post facto Law shall be passed.").

⁴⁰ See *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003).

⁴¹ *Smith*, 538 U.S. at 99.

⁴² In 1995, New Jersey's version of Megan's Law called for sex offenders to register with local law enforcement. A sex offender had to provide, among other information, his or her name, date of birth, address, employment information, names and places of convictions, fingerprints, and photographs. Law enforcement was subsequently authorized to release the sex offender's information to the public as necessary for public protection.

⁴³ See *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 413, 36 A.L.R.5th 711 (1995).

⁴⁴ *Poritz*, 662 A.2d at 406.

explained, "the state interest in public disclosure substantially outweighs" the privacy interest of convicted sex offenders.⁴⁵

III. The U.K. Sex Offender Registry and Community Notification Scheme

A. History of the Registry

The Sex Offenders' Register was created by the Sex Offenders Act 1997⁴⁶ as a way for police in the United Kingdom to keep track of known sex offenders.⁴⁷ Although the Sex Offenders Act 1997 was subsequently repealed by the Sexual Offences Act 2003,⁴⁸ it also mandated sex offender registration.⁴⁹ The Sexual Offences Act 2003 was created "to make new provision[s] about sexual offences, their prevention and the protection of children."⁵⁰ The Sex Offender Register is considered an invaluable tool for managing the public risk from known sex offenders. It is believed that maintaining the Register deters sex offenders from reoffending by enabling the police to know immediately which offenders live nearby if an offense is committed.⁵¹

The notification requirement in the Sexual Offences Act 2003 mandates convicted sex offenders register with their local police department.⁵² Offenders must notify the police within three days of sentencing, which is similar to the United States notification requirement.⁵³ Offenders must stay on the register for varying lengths of time depending upon the severity of their sentence. Offenders are required to be on the Register for a minimum of seven years. The most severe offenders must remain on the Register for an indefinite

⁴⁵ Poritz, 662 A.2d at 406.

⁴⁶ Sex Offenders Act, 1997, c. 51 (Eng).

⁴⁷ See Review of the Protection of Children from Sex Offenders (2007), available at <http://www.homeoffice.gov.uk/documents/CSOR/chid-sex-offender-review-130607?view=Binary> [hereinafter Review of the Protection of Children from Sex Offenders].

⁴⁸ Sexual Offences Act 2003, c.42 § 7 (Eng).

⁴⁹ The Sexual Offences Act 2003 replaced the Sex Offenders Act 1997 and other older sexual offences laws with more specific and explicit wording. It also created several new sexual offences such as Non-consensual Voyeurism and Causing a Child to Watch a Sexual Act, among others; see Sexual Offences Act 2003, c.42 (Eng).

⁵⁰ Sexual Offences Act, 2003, c.42 (Eng).

⁵¹ See Review of the Protection of Children from Sex Offenders, *supra* note 47.

⁵² See Sexual Offences Act, 2003, c.42, Pt. 2 (Eng).

⁵³ Sexual Offences Act, 2003, c.42, Pt. 2 § 83 (Eng).

length of time.⁵⁴ The information offenders must give to police includes their name, date of birth, national insurance number, address, and any other information prescribed by the Secretary of State.⁵⁵ Additionally, an offender must allow the police to take fingerprints and photographs.⁵⁶ More recently, the Home Office⁵⁷ has expanded the list of notification requirements to increase public protection. Registered sex offenders are now required to provide a DNA sample and to notify the police of any e-mail addresses, passport numbers, or bank account numbers.⁵⁸ Offenders must keep police updated as to any changes of their relevant information.⁵⁹ An offender who plans to travel outside of the United Kingdom must notify the police before leaving as to the date of departure, the country or countries to which the offender will be travelling, and any other relevant information.⁶⁰ An offender who fails to comply with notification requirements may be subjected to a fine and a maximum of five years imprisonment.⁶¹ The Association of Chief Police Officers determined that ninety-seven (97) percent of sex offenders were in compliance with the notification requirements set forth in the Sexual Offences Act 2003 as of 2007.⁶²

B. Community Notification

Unlike the situation in the United States, in the United Kingdom the information on the sex offender register is not available to the public at large.⁶³ The information is kept by way of Multi-Agency Public Protection Arrangements (MAPPA), a system in the United Kingdom through which prison, probation and police services across England and Wales share information to oversee dangerous sex offenders.⁶⁴ The idea behind MAPPA is that managing sex offenders reduces their

⁵⁴ Sexual Offences Act, 2003, c.42, Pt. 2 § 82 (Eng).

⁵⁵ Sexual Offences Act, 2003, c.42, Pt. 2 § 83 (Eng).

⁵⁶ Sexual Offences Act, 2003, c.42, Pt. 2 § 87 (Eng).

⁵⁷ The Home Office is the lead government department for immigration and passports, drug policy, counter-terrorism and police. The Home Office Official Website, available at <http://www.homeoffice.gov.uk/about-us>.

⁵⁸ See Review of the Protection of Children from Sex Offenders, *supra* note 47.

⁵⁹ See Sexual Offences Act, 2003, c.42, Pt. 2 § 84 (Eng).

⁶⁰ Sexual Offences Act, 2003, c.42, Pt. 2 § 86 (Eng).

⁶¹ See Sexual Offences Act, 2003, c.42, Pt. 2 § 91 (Eng).

⁶² See Review of the Protection of Children from Sex Offenders, *supra* note 47.

⁶³ See Terry Thomas, Sex Offender Community Notification: Experiences from America, 42 Howard J. Crim. Just. 217, 218 (2003); see Sexual Offences Act, 2003, c.42 (Eng).

⁶⁴ See Review of the Protection of Children from Sex Offenders, *supra* note 47.

risk of harm to the public.⁶⁵ The MAPPA teams monitor sex offenders in several ways. Sex offenders are interviewed by police and information is then shared through regularly held, multi-agency meetings. MAPPA teams also survey high-risk offenders and decide how information about offenders will be shared with the public or key community representatives.⁶⁶

MAPPA teams produce a public annual report that discloses the number of sex offenders in each local area of the United Kingdom, but does not include any names or other personal information.⁶⁷ MAPPA will generally not provide specific sex offender information to the public. MAPPA teams do, however, share specific information about sex offenders through "controlled disclosure."⁶⁸ If police officials determine that 1) a sex offender poses a risk of "serious harm to any particular child or children or to children of any particular description"⁶⁹ and 2) that disclosing the information is necessary to protect the particular child or children from serious harm⁷⁰ then police may disclose the information at their discretion. If information regarding a sex offender is disclosed to a member of the public, police officials must make and keep records about the disclosure explaining their reasons for choosing to do so.⁷¹

Some members of the U.K. public have called for direct and uncontrolled access to sex offenders' information similar to the access available in the United States.⁷² Until recently, Parliament and the Home Office adamantly refused to offer public access to the sex offender register because the government was concerned with vigilantism.⁷³ Experts and academics were also opposed to the release of sex offender's information to the public, claiming there was insuf-

⁶⁵See Keeping Children Safe from Sex Offenders: How Sex Offenders are Managed (2007), available at <http://www.homeoffice.gov.uk/documents/child-safe/keeping-children-safe-130607?view=Binary> [hereinafter Keeping Children Safe from Sex Offenders].

⁶⁶See Keeping Children Safe from Sex Offenders, *supra* note 65.

⁶⁷Keeping Children Safe from Sex Offenders, *supra* note 65.

⁶⁸Keeping Children Safe from Sex Offenders, *supra* note 65.

⁶⁹See Criminal Justice Act, 2003, c. 44, Pt 13 § 327A (Eng.).

⁷⁰Criminal Justice Act, 2003, c. 44, Pt 13 § 327A (Eng.).

⁷¹Criminal Justice Act, 2003, c. 44, Pt 13 § 327A (Eng.).

⁷²See Review of the Protection of Children from Sex Offenders, *supra* note 47.

⁷³See Thomas, *supra* note 63, at 218; Meghan J. Dugan, *Megan's Law or Sarah's Law? A Comparative Analysis of Public Notification Statutes in the United States and England*, 23 Loy. L.A. Int'l & Comp. L. Rev. 617, 618 (2001).

ficient research on the subject.⁷⁴ Currently, the only sex offender information that is available online to all members of the public is the so-called Most Wanted list. The Child Exploitation and Online Protection Centre⁷⁵ website publishes a list of the child sex offenders who are not complying with their notification requirements or are missing. The website seeks the public's assistance in locating these missing or noncompliant sex offenders.⁷⁶

C. Community Notification — Sarah's Law

Eight-year-old Sarah Payne was kidnapped and murdered by a previously-convicted pedophile in 2000.⁷⁷ Her parents subsequently proposed Sarah's Law, which called for the United Kingdom to release the names of local sex offenders, as they are released in the United States under Megan's Law.⁷⁸ Reacting to Sarah Payne's death and upset that the sex offender register was not publicized, *News of the World*, a British tabloid newspaper, claimed it was going to create its own public notification system.⁷⁹ The paper campaigned to "name and shame" all of the child sex offenders in the United Kingdom by posting their information online.⁸⁰ After the information was released on the website, some citizens assaulted and harassed the named sex offenders.⁸¹ The government subsequently ordered the paper to take down the information.⁸²

In 2007, the Home Office announced it would soon introduce a procedure through which members of the public could request information about suspected child sex offenders. Soon, if citizens harbored suspicions about someone with whom they had a personal relationship (like a single mother and her new boyfriend) or someone who had regular, unsupervised contact with their children, they would be able

⁷⁴See Denise Robertson, Megan's law can't replace vigilance, *The Journal* (Newcastle, England), Sept. 23, 2008, at 15.

⁷⁵The Child Exploitation and Online Protection Centre (CEOP) is part of U.K. law enforcement and is dedicated to eradicating child sexual abuse. CEOP educates members of law enforcement and the general public about safety from sex offenders. CEOP also operates the "Most Wanted" list of U.K. sex offenders.

⁷⁶See The Child Exploitation and Online Protection Centre website, available at <http://www.crimestoppers-uk.org/ceop/>.

⁷⁷See Manners, *supra* note 9, at 14.

⁷⁸See Robertson, *supra* note 74, at 15.

⁷⁹See Dugan, *supra* note 73, at 618.

⁸⁰Dugan, *supra* note 73, at 634.

⁸¹Dugan, *supra* note 73, at 618.

⁸²Dugan, *supra* note 73, at 634.

to contact the police and "register an interest" in that person.⁸³ The police would first determine whether the person of interest had any child sex offense convictions. If the person of interest was a convicted child sex offender, the police would next evaluate whether he posed a serious risk of harm to the children of the person who registered the interest. If the offender posed a serious risk of harm, the police would subsequently disclose the offender's information to the requesting person.⁸⁴

On September 15, 2008⁸⁵ a pilot project was launched⁸⁶ in four areas of England (Warwickshire, Cambridgeshire, Cleveland and Hampshire)⁸⁷ that allowed parents to access sex offender information.⁸⁸ Under the Sarah's Law pilot scheme,⁸⁹ citizens who suspect they are involved with a convicted sex offender can now confirm those suspicions.⁹⁰ The police will run two types of checks on the person in question. First, a "priority check" will be run within twenty-four hours of the request. Within ten business days a "full risk-assessment" will be completed.⁹¹ If police discover the person is a child sex offender they will refer the case to MAPPA. Presumably, if the person presents a serious risk of harm to the child in question, MAPPA will disclose the sex offender's status to the concerned citizen.⁹² Members of the public who receive this information are expected to "keep it to themselves."⁹³

IV. Comparing the Two Systems

A. Sex Offender Registries

The sex offender registries in the United States and the United Kingdom are quite similar. Both the United States and the United Kingdom claim the purpose of their sex offender registry is to protect the public, especially children, from sex offenders.⁹⁴ Neither jurisdiction claims that the registration or notification processes are meant to be

⁸³ Review of the Protection of Children from Sex Offenders, *supra* note 47.

⁸⁴ See Review of the Protection of Children from Sex Offenders, *supra* note 47.

⁸⁵ See Manners, *supra* note 9, at 14.

⁸⁶ See Payne, *supra* note 9, at 7.

⁸⁷ See Manners, *supra* note 9, at 14.

⁸⁸ See Payne, *supra* note 9, at 7.

⁸⁹ See Manners, *supra* note 9, at 14.

⁹⁰ See Robertson, *supra* note 74, at 15.

⁹¹ See Payne, Sex offender scheme, *supra* note 9.

⁹² See Payne, Sex offender scheme, *supra* note 9.

⁹³ See Robertson, *supra* note 74, at 15.

⁹⁴ See Sexual Offences Act, 2003, c. 42 (Eng); Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registra-

punitive in any way. Both registries require very similar information including DNA samples, fingerprints, and updated photographs in an effort to effectively monitor offenders. Both jurisdictions require offenders to remain on the registry for similar lengths of time and both threaten substantial periods of incarceration for failure to comply.

Due to their perceived high rate of recidivism, sex offenders are believed to pose a threat to society because they are likely to re-offend.⁹⁵ Sex offenders who know their DNA, fingerprints, and photographs are on the registry may be deterred from committing further sexual offences.⁹⁶ Even if the offenders are not dissuaded, at least there is a greater chance that they will be captured and convicted upon committing another crime.

B. Community Notification Laws

Although the sex offender registries in the United States and the United Kingdom are very similar, the manner in which this information is shared with the public could not be more different. Up until very recently, the U.K. police secretly maintained their registries and they elected to disclose sex offender information on a strictly need-to-know basis. Each year, MAPPA teams alert the public as to the number of sex offenders living in each area of the United Kingdom, but they do not share identifying information about any specific offender. The U.K. government has thus far resisted public pressure for unrestricted community notification. Even now, the pilot project "Sarah's Law" does not guarantee that members of the public will receive information about local sex offenders. MAPPA teams retain the power to share a sex offender's personal information; they assess each citizen's request and determine whether the offender in question poses a substantial risk of harm to a particular child. If the U.K. police do share personal information about a sex offender with a member of the public, that citizen is expected to regard the information as confidential. The only sex offenders whose personal information is available to the general public are those on the "Most Wanted" list for noncompliance with the sex offender register.

In contrast to the selective community notification in the United Kingdom, the United States continues not only to maintain but to improve and widen access to its statutorily-established public sex offender website. Significant improvements over the past few years al-

tion Act, as Amended, 64 FR 572 (1999); Adam Walsh Child Protection and Safety Act of 2006, PL 109-248 (HR 4472) (2006).

⁹⁵ See United States Department of Justice — Bureau of Justice Statistics, available at <http://www.ojp.usdoj.gov/bjs/pub/press/rsorp94pr.htm>.

⁹⁶ See Doron Teichman, Sex, Shame, and the Law: An Economic Perspective on Megan's Law, 42 Harv. J. on Legis. 355, 391 (2005).

low for easier, faster and more comprehensive access to the website. This virtually unrestricted access was granted in response to public pressure in the aftermath of Megan Kanka's rape and murder. Unlike the United Kingdom, there is no requirement that the citizen and offender live in the same area or that the citizen and offender have a personal relationship. U.S. sex offender websites post, among other information, sex offenders' names, photographs, home, work and school addresses, and times and places of their convictions.

C. Underlying Reasons for Differences

1. The Role of Centralized Government

The differing political structures in the United States and the United Kingdom help explain the differences in their respective community notification schemes. At its foundation, the United States is rooted in a mistrust of centralized authority and a sense of individual autonomy. The U.S. government is considerably less centralized than the U.K. government.⁹⁷ Historically, the founders of the United States chose to restrict the power of central government, as they feared "the potential for abuse inherent in unlimited power."⁹⁸ The U.S. Constitution and Bill of Rights are structured to limit the role of national government.⁹⁹ In the United States, citizens prefer to solve problems with "nongovernmental solutions."¹⁰⁰ It is not surprising that people in the United States prefer to take sex offender-monitoring into their own hands, rather than entrust their safety from sex offenders with a centralized government.

On the other hand, the U.K. government is considered the "fundamental vehicle for collective choices and actions towards social betterment, and probably the most capable and effective actor towards those goals."¹⁰¹ The U.K. government is powerful and centralized.¹⁰² Subjects of the Crown rely less on individual decision-making and more on centralized government to address and solve major social problems.¹⁰³ Subjects of the United Kingdom trust their government to make their collective decisions and keep everyone safe from harm.

⁹⁷ See P.S. Atiyah, *Tort Law and the Alternatives: Some Anglo-American Comparisons*, 1987 Duke L.J. 1002, 1018 (1987).

⁹⁸ Karen Wright, *Generosity vs. Altruism: Philanthropy and Charity in the United States and United Kingdom*, 12(4) *Voluntas: Int'l J. Voluntary & Nonprofit Organizations* 9, 9 (2001).

⁹⁹ Wright, *supra* note 98, at 9.

¹⁰⁰ Wright, *supra* note 98, at 9.

¹⁰¹ Wright, *supra* note 98, at 9.

¹⁰² See Atiyah, *supra* note 97, at 1018.

¹⁰³ See Atiyah, *supra* note 97, at 1018.

The political psyche of the U.K. population explains why Sarah's Law is an acceptable form of community notification in the United Kingdom; people in the United Kingdom inherently trust their government to keep them safe in a way that people in the United States do not. The political psyche of the U.S. population helps explain why Megan's Law is the acceptable form of community notification in the United States; citizens of the United States have an inherent distrust of centralized government and are more inclined to take it upon themselves as individuals to ensure their safety from sexual predators.

2. *The Historical Role of the Police*

The varying attitudes people have towards the police in the United States and the United Kingdom may further explain the differences in their respective community notification schemes. Historically, the U.S. government encountered challenges when creating its police organizations; "police had to be rendered compatible with the one legitimating principle that remained after the American Revolution, the principle of self-government, or autonomy."¹⁰⁴ An oppressive police regime that denies citizens their "fundamental right to self-government" will not be tolerated.¹⁰⁵ The U.S. Constitution and the Supreme Court both have a role in limiting police power¹⁰⁶ and police in the United States are "placed within the limits of the law."¹⁰⁷ Today, many Americans have a general mistrust of the police based on their personal experiences as well as highly publicized stories of police brutality and harassment.¹⁰⁸

Unlike the United States, the police dominate the criminal law process in the United Kingdom.¹⁰⁹ The U.K. police, "exercise their power with a remarkable degree of autonomy: under the doctrine of 'constabulary independence', they have the legal right to enforce the

¹⁰⁴Markus Dirk Dubber, "The Power to Govern Men and Things": Patriarchal Origins of the Police Power in American Law, 52 *Buff. L. Rev.* 1277, 1342 (2004).

¹⁰⁵Dubber, *supra* note 104, at 1342.

¹⁰⁶Christopher Tomlins, To Improve the State and Condition of Man: The Power to Police and the History of American Governance, 53 *Buff. L. Rev.* 1215, 1237 (2005).

¹⁰⁷Tomlins, *supra* note 106, at 1237.

¹⁰⁸See, for example: the Abner Louima case, where a man in custody was beaten and sodomized by members of the New York City Police Department (see Andy Newman, *The Louima Ruling: 70th Precinct; Residents Say a Ruling Feeds Into Their Mistrust*, N.Y. Times, Mar. 1, 2002; the Sean Bell case, where police killed an unarmed man after shooting fifty bullets at him. See Anemona Hartocollis, *Fatal Shootings by Police: Hard to Investigate, Even Harder to Prosecute*, N.Y. Times, Dec. 4, 2006, available at <http://www.nytimes.com/2006/12/04/nyregion/04legal.html>.

¹⁰⁹See Frank Belloni & Jacqueline Hodgson, *Criminal Injustice: An Evaluation of the Criminal Justice Process in Britain* 23 (2000).

law as they see fit."¹¹⁰ Police in the United Kingdom have extraordinary discretion, independence, and power.¹¹¹

The U.K. public trusts its police to warn them of potential danger from convicted sex offenders. Up until 2008, members of MAPPA were solely responsible for determining whether community notification was needed. Now, with the launching of the Sarah's Law pilot programs, even if a citizen inquires about a convicted sex offender, U.K. authorities still have the discretion to evaluate the request and decide whether or not to disclose information. It is hard to imagine people in the United States passively waiting for the police to contact them about a sex offender living in the community who posed a risk to their child, as was the procedure in the United Kingdom until very recently. It is doubtful that people in the United States would tolerate the Sarah's Law community notification method. Sarah's Law calls for extensive police discretion, which conflicts with U.S. attitudes towards police. Police departments in the United States were developed under a level of scrutiny and mistrust that continues today; that mistrust is reflected in Megan's Law and the widely publicized sex offender information available in the United States.

3. *The Protection of Privacy and Reputation*

Arguably, the United Kingdom values private reputational interests more than the United States.¹¹² For example, a media organization that reports a criminal suspect's identity faces drastically more serious sanctions in the United Kingdom than in the United States. In the United States, the media may be liable for defamation, but in the United Kingdom, the media can be held in contempt of court.¹¹³ The United Kingdom is also more protective of a defendant's privacy than the United States.¹¹⁴ For example, cameras are not permitted in U.K. courtrooms¹¹⁵ but the majority of U.S. states allow cameras in their courtrooms and permit trials to be televised.¹¹⁶ Finally, the value of reputation is also evident in U.K. libel law. In the United Kingdom, if a

¹¹⁰ Belloni & Hodgson, *supra* note 109, at 23.

¹¹¹ See Belloni & Hodgson, *supra* note 109, at 24.

¹¹² See Harvard Law Review Association, VI. Media Liability for Reporting Suspects' Identities: A Comparative Analysis, 120 Harv. L. Rev. 1043 (2007) [hereinafter Harvard].

¹¹³ Harvard, *supra* note 112.

¹¹⁴ See Stephen A. Metz, Justice Through the Eye of a Camera: Cameras in the Courtrooms in the United States, Canada, England, and Scotland, 14 Dick. J. Int'l L. 673, 684 (1996).

¹¹⁵ Metz, *supra* note 114, at 684.

¹¹⁶ See Christo Lassiter, Put the Lens Cap Back on Cameras in the Courtroom: A Fair Trial is at Stake, 67 N.Y. St. B.J. 6 (Jan. 1995).

published statement has an adverse affect on a person's reputation, it is prima facie defamation.¹¹⁷ Unlike U.S. courts, U.K. courts often find in favor of plaintiffs in libel suits.¹¹⁸ Once U.K. plaintiffs demonstrate that published words defamed them, U.K. law presumes the words are false.¹¹⁹ "Traditionally, in the United Kingdom, a plaintiff's reputation has been given greater protection than a journalist's published statements about the plaintiff."¹²⁰

On the other hand, libel law in the United States is limited by principles of the First Amendment.¹²¹ There is no liability unless a defendant consciously disregards the truth when publishing a statement that defames a plaintiff.¹²² And, to recover damages in a defamation action in the United States, there must be proof of "actual malice."¹²³

The United Kingdom's high regard for reputation and secrecy, as reflected in their libel laws and rules against cameras in the courts, may help explain the United Kingdom's hesitance to publish information about its convicted sex offenders. The United States places less value in an individual's reputation and more on individual rights to free speech. This helps explain why the United States publicizes its sex offender registry and the United Kingdom does not.

As demonstrated by their different approach to televised proceedings, the United States and the United Kingdom place different value on maintaining the anonymity of criminal defendants. In the United Kingdom, defendants may remain anonymous under certain circumstances. For example, U.K. courts may order that a defendant's

¹¹⁷See Sandra Coliver, *Hollywood and Free Speech: The Contribution of the First Amendment and U.S. Media to the World-Wide Promotion of Democratic Values*, 17 *Whittier L. Rev.* 271, 273 (1995).

¹¹⁸See Sean Thomas Prosser, *The English Libel Crisis: A Sullivan Appellate Review Standard is Needed*, 13 *N.Y.L. Sch. J. Int'l & Comp. L.* 337, 339 (1992).

¹¹⁹See Prosser, *supra* note 118, at 341.

¹²⁰Douglas R. Gould, *Is Editing What Judges Are For? Judicial Review of Journalists' Editorial Decisions in Defamation Cases in the United Kingdom and Europeans Court of Human Rights*, 46 *CLMJTL* 732, 46 *Colum. J. Transnat'l L.* 732, 734 (2008).

¹²¹Prior to 1964, U.S. courts were in agreement with the English standard that any libel was per se actionable. The U.S. Supreme Court case *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, 1 *Media L. Rep.* (BNA) 1527, 95 *A.L.R.2d* 1412 (1964), drastically changed U.S. libel law by establishing that libel laws were limited by First Amendment principles. Now, there is only liability if the defendant had "actual knowledge or disregard for the truth" regarding the libelous statement (See Prosser, *supra* note 118, at 343-45).

¹²²See Prosser, *supra* note 118, at 343-45.

¹²³Prosser, *supra* note 118, at 343-45.

identity remain anonymous under the Contempt of Court Act 1981.¹²⁴ If "the administration of justice would be seriously affected"¹²⁵ were a defendant's identity revealed, a court may order a criminal defendant's identity remain anonymous throughout the duration of his or her trial.¹²⁶ Additionally, in the United Kingdom, it is generally accepted that several years after a criminal conviction, said conviction "acquire[s] a degree of confidentiality about it."¹²⁷ Moreover, in U.K. criminal cases involving the exploitation of children,¹²⁸ courts prohibit the media from publishing the names of the child victims as well as the defendants while the trial is ongoing.¹²⁹ In these child sex offense cases, U.K. courts have tried to keep defendants' identities anonymous post-conviction as well, in an effort to maintain their anonymity as well as that of their victims. Despite their efforts, the U.K. courts are currently unauthorized to compel the media to retain defendants' anonymity after they are convicted.¹³⁰

¹²⁴ Contempt of Court Act, 1981 c. 49 s. 11 (Eng.).

¹²⁵ *Times Newspapers Ltd v. R* [2008], 105 L.S.G. 20 (CMAC).

¹²⁶ In this case, newspaper publishers appealed against a court order that proceedings brought against six soldiers (accused of conspiracy to defraud) should be held in camera and that no reports of the proceedings should be published. In regards to the defendants' anonymity, the court held: "For the court to be entitled to make any order for anonymity for all or any of the soldiers, it had to be satisfied, either that the administration of justice would be seriously affected, or that there was a real and immediate risk to the life of any of the soldiers if anonymity was not granted." "In the instant case the claim to anonymity rested fairly and squarely on the risk to the lives of two of the soldiers, and their service history made it clear that there would be a real and immediate risk if they were identified." *Times Newspapers Ltd*, 105 L.S.G. 20.

¹²⁷ See Thomas, *supra* note 63, at 225.

¹²⁸ These include crimes which fall under the Children and Young Persons Act, 1933 s. 39 (Eng), such as endangering children and exploiting them sexually.

¹²⁹ See Children and Young Persons Act, 1933 s. 39 (Eng), ("[N]o newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person [by or against] or in respect of whom the proceedings are taken, or as being a witness therein.").

¹³⁰ See *R. (on the application of Gazette Media Co Ltd) v. Teesside Crown Court*, [2005] EWCA Crim 1983 (Eng. C.A.), where the Gazette Media Company appealed against an order restricting the publication of reports in which the defendants were convicted of conspiracy to rape a child (the victim being the child of one of the defendants). The Court held that s. 39 of the Act did not empower courts to prohibit the publication of the names of defendants once convicted.

In the United States, judicial proceedings are "presumptively open."¹³¹ Private citizens and the media have the right to attend trial proceedings.¹³² This right is based on the public's First Amendment "right of access to information about the conduct of public affairs,"¹³³ and a criminal defendant's Sixth Amendment right to a "public trial."¹³⁴ Occasionally, in the interest of justice, U.S. courts may limit the public's access to a trial.¹³⁵

4. *Shaming as Punishment*

Sex offender registration and community notification can result in a "social stigma being attached to the offender."¹³⁶ Some argue that this shaming is a type of shaming punishment. "Traditionally, shame punishments had the purpose to diminish an offender's standing in the community through some form of public humiliation."¹³⁷ "Sex is an ideal context to inflict suffering through shame . . . [as] there exists a cross-cultural consensus about the shameful of sex crimes."¹³⁸ Community notification can cause negative effects even beyond embarrassment or shame. Disseminating sex offenders' information can cause other members of the community to inflict their own sanctions, "such as the severing of relationships, termination of employment, and even violent retaliation."¹³⁹ The United States and the United

¹³¹ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 568, 100 S. Ct. 2814, 65 L. Ed. 2d 973, 6 Media L. Rep. (BNA) 1833 (1980), which held the First Amendment guaranteed the public and the press the right to attend criminal trials.

¹³² See *Craig v. Harney*, 331 U.S. 367, 374, 67 S. Ct. 1249, 91 L. Ed. 1546, 1 Media L. Rep. (BNA) 1310 (1947), where the Court held, "[w]hat transpires in the court room is public property."

¹³³ Babak A. Rastgoufard, Pay Attention to That Green Curtain: Anonymity and the Courts, 53 Case W. Res. L. Rev. 1009 (2003); see U.S. Const. amend. I.

¹³⁴ U.S. Const. amend. VI.

¹³⁵ See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581, 100 S. Ct. 2814, 65 L. Ed. 2d 973, 6 Media L. Rep. (BNA) 1833 (1980), where the Court stated, "our holding today does not mean that the First Amendment rights of the public and representatives of the press are absolute. Just as a government may impose reasonable time, place, and manner restrictions upon the use of its streets in the interest of such objectives as the free flow of traffic, see, e. g., *Cox v. State of New Hampshire*, 312 U.S. 569, 61 S. Ct. 762, 85 L. Ed. 1049, 133 A.L.R. 1396 (1941), so may a trial judge, in the interest of the fair administration of justice, impose reasonable limitations on access to a trial."

¹³⁶ Anne-Marie McAlinden, The Use of 'Shame' with Sexual Offenders, 45 Brit. J. Criminology 373, 377 (2005).

¹³⁷ Eyssen, *supra* note 16, at 125.

¹³⁸ Teichman, *supra* note 96, at 388-89.

¹³⁹ Teichman, *supra* note 96, at 358.

Kingdom have approached the shaming component of community notification schemes differently.

The U.S. Supreme Court acknowledged the public shame that accompanies community notification in *Smith v. Doe*.¹⁴⁰ The *Smith* Court recognized that humiliation is a consequence of being on a sex offender registry,¹⁴¹ but reasoned that the purpose of community notification was public safety and not to shame or further punish sex offenders. U.S. courts, legislatures, and citizens collectively agree that the safety of the community outweighs the humiliation of the convicted.

The U.K. government will not tolerate the shaming element of community notification. When the *News of the World* set out to create its own online public notification system¹⁴² and vowed to "name and shame" every registered child sex offender in the United Kingdom,¹⁴³ the government immediately ordered the tabloid take down the sex offenders' information.¹⁴⁴ The United Kingdom chooses not to shame compliant sex offenders and only seeks to shame or punish those who are noncompliant by placing them on the "Most Wanted" website. The fact that the United Kingdom only publicizes a noncompliant sex offender on the Internet tends to support the idea that the United Kingdom views such publicity as a form of shaming punishment.

5. The Tolerance of Vigilantism

The U.K. government cited concerns of vigilantism as a reason for not publicizing the names of registered sex offenders.¹⁴⁵ There have been reports of vigilantism in the United Kingdom in response to the publicizing of sex offenders' information including acts of vandalism, harassment and violence. U.K. government officials are cautiously trying to strike a balance between protecting children from sex offenders and protecting all citizens from vigilantism.¹⁴⁶

Vigilantism has occurred in the United States "but not, for some reason, on the scale experienced in the [United Kingdom]."¹⁴⁷ Although incidents are rare, U.S. sex offenders "have been subjected to threats,

¹⁴⁰ See *Smith v. Doe*, 538 U.S. 84, 99, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003).

¹⁴¹ *Smith*, 538 U.S. at 99.

¹⁴² See Dugan, *supra* note 73, at 618.

¹⁴³ See McAlinden, *supra* note 136, at 379.

¹⁴⁴ McAlinden, *supra* note 136, at 634.

¹⁴⁵ See Thomas, *supra* note 63, at 218.

¹⁴⁶ BBC News, Minister Examines 'Megan's Law', June 18, 2006, available at http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/politics/5091530.stm [hereinafter BBC News, Minister Examines 'Megan's Law'].

¹⁴⁷ Thomas, *supra* note 63, at 225.

vandalism of their property, physical assaults, and gunshots."¹⁴⁸ These acts "have been directly attributed to sex offender notification."¹⁴⁹ U.S. courts recognized the risk of vigilantism as a result of community notification but chose not to invalidate Megan's Law because of the risk of vigilantism.¹⁵⁰ In an effort to curb vigilantism in the United States, sex offender websites post warnings that any illegal actions taken against a person on the registry, "including vandalism of property, verbal or written threats of harm, or physical assault against an individual . . . their family, or employer, may result in arrest and prosecution."¹⁵¹

6. Timing

Finally, Megan's Law had been in existence for well over a decade when the United Kingdom undertook to establish Sarah's Law in 2007. In the United States, both legislators and the general public believe sex offenders reoffend at "exceptionally high" rates.¹⁵² This perceived recidivism rate is the rationale behind the Megan's Law community notification schemes.¹⁵³ However, it is not entirely clear whether sex offenders do reoffend at higher rates than other criminals.¹⁵⁴ Some research indicates that recidivism rates in sex offenders is no higher than that of other types of offenders;¹⁵⁵ still other data demonstrates sex offenders do reoffend more often.¹⁵⁶

It is unclear whether Megan's Law is an effective preventative tool for communities. On average, twenty-four percent of convicted sex offenders are not registered on their state's sex offender registry.¹⁵⁷ One study in Massachusetts "found that, out of 136 cases involving a

¹⁴⁸Teichman, *supra* note 96, at 387-88.

¹⁴⁹Eyssen, *supra*, at 116.

¹⁵⁰Michael J. Watson, *Carnage on Our Nation's Highways: A Proposal For Applying the Statutory Scheme of Megan's Law to Drunk-Driving Legislation*, 39 Rutgers L.J. 459, 525 (2008); see also, e.g., *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 377, 36 A.L.R.5th 711 (1995) ("[P]resumably, some citizens will harass, and presumably they will be prosecuted, but we believe that overwhelmingly our citizens are law-abiding citizens.").

¹⁵¹Center for Sex Offender Management, *Community Notification and Education* (April 2001), available at <http://www.csom.org/pubs/notedu.html>.

¹⁵²Teichman, *supra* note 96, at 382.

¹⁵³See Alan R. Kabat, *Scarlet Letter Sex offender Databases and Community Notification: Sacrificing Personal Privacy for a Symbol's Sake*, 35 Am. Crim. L. Rev. 333, 335 (1998).

¹⁵⁴Kabat, *supra* note 153, at 335.

¹⁵⁵See Teichman, *supra* note 96, at 382-83.

¹⁵⁶See Kabat, *supra* note 153, at 335.

¹⁵⁷See Teichman, *supra* note 96, at 384.

convicted sex offender, in only six cases could notification have potentially warned the victim (or the victim's guardian) before the re-offense."¹⁵⁸ Some evidence indicates that victims of intra-familial abuse may not report sexual abuse crimes "because of fears related to community notification."¹⁵⁹

Researchers in the United Kingdom have studied Megan's Law. In 2006, the U.K. Home Secretary sent a government minister to the United States to study Megan's Law in an effort to "discover the best way of ensuring the controlled release of [sex offender] information to the public" in the United Kingdom.¹⁶⁰ U.K. research indicates that it is unclear whether or not Megan's Law keeps children safe, as there is insufficient data to determine if community notification actually keeps down recidivism rates.¹⁶¹ Additionally, some evidence suggests that parents may develop a false sense of fear of offenders in the community, as the laws exaggerate the true level of offender recidivism."¹⁶²

The United Kingdom, in an attempt to implement an effective and thoughtful community notification scheme, has studied the U.S. method. The lack of conclusive data as to the effectiveness of Megan's Law in the United States helps explain the U.K. government's hesitancy in implementing a similar community notification scheme in their own jurisdiction.

V. Conclusion

This paper compared the sex offender community notification schemes in the United States and the United Kingdom and explored the underlying reasons for their differences. Megan's Law demands public access to sex offender registries while Sarah's Law denies such access. Both societies aim to keep their communities safe from sex offenders but their approaches to notification drastically differ. Neither method has been proven more effective than the other. However, each notification system seems to correspond with its respective societal norms and the general psyche of each population.

¹⁵⁸Teichman, *supra* note 96, at 383-84.

¹⁵⁹Kate Fitch, *Megan's Law: Does it protect children?*, The National Society for the Prevention of Cruelty to Children, available at http://www.nspcc.org.uk/Inform/publications/downloads/meganslaw2_wd48102.pdf.

¹⁶⁰BBC News, *Minister examines 'Megan's Law,'* *supra* note 146.

¹⁶¹See Fitch, *supra* note 159.

¹⁶²Fitch, *supra* note 159.