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Balancing the Protection of Children against the Protection of Constitutional Rights: The Past, Present and Future of Megan's Law

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Balancing the Protection of Children Against the Protection of Constitutional Rights: The Past, Present and Future of Megan's Law

I. INTRODUCTION

During 2002, issues of child safety and protection came to the forefront. Television news reports consistently opened their programming with images of kidnapped children and seemed to infer that this "new phenomena" had reached epidemic status.¹ These reports made frequent references to other instances of child kidnapping, particularly the well-known case of Megan Kanka.² Megan was a seven year-old New Jersey girl who was kidnapped, raped and murdered in 1994 by a convicted sex offender who lived across the street from her home.³ "Megan's Law," as it became commonly known, was quickly enacted, first in New Jersey and later by the federal government, in an attempt to protect other children from the acts of known sex offenders.⁴

During this same time period in 2002, Megan's Law was under attack on several fronts.⁵ In late 2001, several challenges to the constitutionality of Megan's Law arose and the United States Supreme Court has only recently decided to uphold Megan's Law in two states, despite these challenges.⁶ This comment will examine the past, present and possible future of Megan's Law legislation. In doing so, it will address the origins of the law, its widespread application and finally, its probable future in light of recent events.

1. Susan Reinhart, *Recent Events Prompt Talk With Daughter*, ASHEVILLE CITIZEN-TIMES, July 28, 2002, at 1B. See also John Woolfolk, "Block Parents" Program Revisited, August 7, 2002, SAN JOSE MERCURY NEWS (observing that the spate of kidnappings was causing anxiety among parents across the country).

2. Reinhart, *supra* note 1.

3. Mission Statement of the Megan Nicole Kanka Foundation, at <http://www.megannicolekanka foundation.org/mission.htm> (last visited on March 11, 2003).

4. Court TV Casefiles: New Jersey v. Timmendequas (5/97), at <http://www.court tv.com/casefiles/verdicts/kanka.html> (last visited Jan. 10, 2003).

5. Associated Press, *Supreme Court Debates Merits of Megan's Laws* (November 14, 2002), available at <http://www.freedomforum.org/templates/document.asp?documented=17253> (last visited January 10, 2003).

6. Martin A. Schwartz, *Supreme Court Rejects Megan's Law Challenges, Key Issues Remain*, 229 N.Y.L.J. 3 (2003).

II. THE ORIGINS OF MEGAN'S LAW

A. *Megan's Story*

On July 29, 1994, seven-year old Megan Kanka left her home in Hamilton Township, New Jersey and never returned.⁷ Megan's mother, Maureen Kanka, awoke from a nap sometime after 6:30 p.m. to discover that Megan was missing.⁸ After searching the neighborhood and speaking with several neighbors, Mrs. Kanka contacted the local police for help in finding her lost child.⁹ Among the neighbors first questioned by Mrs. Kanka, and later by the Hamilton Township Police, was Jesse Timmendequas.¹⁰

Timmendequas lived in a house located across the street and diagonal to the Kanka residence.¹¹ He shared that house with two other adult males, Brian Jenin and Joseph Cifelli.¹² At the time that Megan disappeared, the Kanka's and their neighbors were unaware that Timmendequas shared something else in common with his housemates – all three men were convicted sex offenders.¹³

Following their arrival at the Kanka home, officers proceeded to question neighbors, including Timmendequas, regarding Megan's disappearance.¹⁴ The officers became suspicious when Timmendequas began to shake and perspire heavily while being interviewed, and subsequently requested that he accompany them to the police station, where they arrived at approximately 3:00 a.m.¹⁵ After he was read his Miranda rights, Timmendequas was repeatedly questioned about his involvement in Megan's disappearance, while he

7. *State v. Timmendequas*, 737 A.2d 55, 66 (N.J. 1999). It is believed that before her encounter with Jesse Timmendequas, Megan was on her way to play at a friend's house, which was located just down the street from her own home. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 66-67.

11. *Id.* at 66. During the course of the trial, testimony revealed that Timmendequas had lured Megan into the home, specifically his bedroom, by promising to show her a puppy. CNN Interactive, *Repeat Sex Offender Guilty in "Megan's Law" Case* (May 30, 1997), at <http://www.cnn.com/US/9705/30/megan.kanka/> (last visited Jan. 10, 2003).

12. Court TV Casefiles, *supra* note 4. The house that the three men shared was owned by Cifelli. *Timmendequas*, 737 A.2d at 66.

13. Court TV Casefiles, *supra* note 4. In fact, the three men allegedly met while residents of New Jersey's Avenel Adult Diagnostic and Treatment Center for sexual offenders. *Id.* Timmendequas had apparently been convicted in 1981 for an attack on a five-year old child and the attempted sexual assault of a seven-year old. See CNN Interactive, *supra* note 11.

14. *Timmendequas*, 737 A.2d at 67-68.

15. *Id.* at 67.

continually alleged his innocence.¹⁶ Finally, nearly twenty-four hours after Maureen Kanka first realized her child was missing, Timmendequas asked to speak with his roommate, Brian Jenin, to whom he confessed the location of Megan's body.¹⁷

Timmendequas accompanied police officers to a local park and led them directly to where he had hidden the child's body.¹⁸ The medical examiner determined that Megan had been struck in the head and face, raped and sodomized, and that the ultimate cause of death was strangulation.¹⁹

B. *State v. Timmendequas*

On October 19, 1994, Jesse Timmendequas was charged with knowing or purposeful murder, felony murder, first degree kidnapping and first degree aggravated assault.²⁰ Prior to trial, the defense made a series of pre-trial motions, most notably a motion to change venue, a motion to suppress evidence obtained during the lawful search of Timmendequas' home and a motion to suppress statements made by Timmendequas to the police while he was in custody.²¹ Although the court did not agree to change venue, it ultimately ruled that a "foreign jury" would be empanelled from another county within the state.²² The court also dismissed the motion to suppress evidence and ruled that all of Timmendequas' statements to police would be admissible.²³

16. *Id.* at 67-68. The officers who were questioning Timmendequas became increasingly suspicious due to inconsistencies in his statements. *Id.*

17. *Id.*

18. *Id.* Megan's body was found concealed from view in tall weeds. *Id.* See also Court TV Casefiles, *supra* note 12.

19. *Timmendequas*, 737 A.2d at 69.

20. *Id.* at 64-65. A Notice of Aggravating Factors was subsequently filed on November 18, 1994. *Id.* The aggravating factors were that "the murder was committed to escape detection, apprehension, trial, punishment or confinement for the aggravated sexual assault and/or kidnapping of the victim . . . [and] the murder was committed in the course of the commission of an aggravated sexual assault and/or kidnapping of the victim" *Id.*

21. *Id.* at 65.

22. *Id.* On April 15, 1997, counsel for Timmendequas filed a motion for reconsideration regarding the request for change of venue, however, the court once again denied the motion. *Id.* The motion was again renewed prior to trial, and was again denied. *Id.*

23. *Id.*

1. *The Guilt Phase*

Timmendequas' trial began on May 5, 1997.²⁴ The state presented a great deal of forensic evidence, some of it extremely graphic in nature, which clearly linked Timmendequas to Megan's murder.²⁵ The prosecution also alleged that after raping Megan, Timmendequas first used a black leather belt to strangle her and then covered her head with a plastic bag to ensure that she was dead before disposing of her body.²⁶

In addition to forensic and other evidence, one of the police officers who had been involved in questioning Timmendequas concerning the crime testified that Timmendequas had indicated that "he felt he had been slipping for a while, meaning getting those feelings for little girls . . . for a couple of weeks or a couple of months."²⁷ Timmendequas did not testify or present witnesses during the guilt phase of his trial.²⁸ His defense was presented through cross-examination and argument, and he was ultimately found guilty by the jury on all counts.²⁹ At the time that the verdict was announced, the jury had deliberated for less than five hours.³⁰

2. *The Penalty Phase*

During the penalty phase of the trial, Timmendequas presented two witnesses who testified on his behalf as to "mitigating factors."³¹ The prosecution relied upon the evidence that had been

24. *Timmendequas*, 737 A.2d at 67-70. The guilt phase, which concluded on May 30, 1997, lasted 25 days. *Id.*

25. *Id.* The evidence used to convict Timmendequas included a rope with dried blood on it, the waistband and a piece of fabric from Megan's pants, both of which were located in a trash can outside of Timmendequas' home, as well as forensic evidence including a bite mark left by Megan on Timmendequas' hand, blood stains on the belt used to strangle her, fiber samples consistent with the carpeting in Timmendequas' bedroom, blood on his bed sheets, and a pubic hair found on Megan's body. *Id.*

26. *Id.* at 69. The medical examiner concluded that the official cause of death was "mechanical strangulation" by a leather belt and that the plastic bag used by Timmendequas "hastened," but did not cause, Megan's death. *Id.* When Megan's body was discovered, the plastic bag was still in place, covering her head. *Id.* at 68.

27. *Id.* at 69 (internal quotations omitted).

28. *Id.* at 70.

29. *Id.* Despite the fact that Timmendequas' counsel failed to present evidence on his behalf, the only allegation on appeal with regard to ineffective assistance of counsel related to the failure by his counsel to determine whether the age of the victim would adversely impact potential jurors ability to deliberate fairly. *Id.* at 99.

30. CNN Interactive, *supra* note 11.

31. *Timmendequas*, 737 A.2d at 70. The two witnesses, a forensic social worker and a clinical and forensic psychologist, testified with regard to the abuse Timmendequas alleg-

presented in the guilt phase of the trial, their cross-examination of the defense witnesses, the victim impact statement read by Megan's father, and the testimony of four rebuttal witnesses which included a forensic psychologist and three police officers.³² The jury found that the aggravating factors outweighed the mitigating factors and sentenced Timmendequas to death.³³

3. *The Appeal*

Timmendequas' conviction was appealed to the Supreme Court of New Jersey as a matter of right.³⁴ Among the numerous issues raised on appeal, seemingly one of the most controversial centered around the trial court's rejection of Timmendequas' motion to change venue. Counsel for Timmendequas had sought to change venue due to the extensive publicity that surrounded the case prior to trial.³⁵ In addition to the normal publicity surrounding a crime of this type, the case also received national attention due to the Kankas' pro-active work to establish legislation designed to protect other children from sexual predators.³⁶

In the motion to change venue, counsel specifically noted that 437 separate articles had appeared regarding the case in two prominent local papers.³⁷ Although the court acknowledged that the publicity was significant, it rationalized keeping the trial in Mercer County due to the decision to empanel a foreign jury and also cited the fact that moving the trial to another county would

edly sustained as a child as well as his social, emotional and psychological problems. *Id.* at 70-74. New Jersey defines "mitigating factors" as "[a]ny other factor which is relevant to the defendant's character or record or to the circumstances of the offense." N.J. STAT. § 2C:11-3c(5) (2002). Furthermore, a defendant "may offer, without regard to the rules governing the admission of evidence at criminal trials, reliable evidence relevant to any of the mitigating factors." N.J. STAT. § 2C:11-3c(2)(b) (2002).

32. *Id.* at 71-72.

33. *Id.* at 73. See also *Timmendequas*, *supra* note 14 and accompanying text.

34. *Id.* at 64. See also N.J. Ct. R. 2:2-1(a)(3). The New Jersey Rules of Court provide that "[a]ppeals may be taken to the Supreme Court from final judgments as of right . . . directly from the trial courts in cases where the death penalty has been imposed and in post-conviction proceedings in such cases . . ." N.J. Ct. R. 2:2-1(a)(3) (2002).

35. *Timmendequas*, 737 A.2d at 73-75. Among the specific instances of publicity raised on appeal were articles which referred to Timmendequas as "scum," a "predator," a "piece of trash," an "animal," a "pervert," a "dirtball," a "sicko," a "monster," and a "bottom-feeder." *Id.* at 73.

36. *Id.* This legislation and the work of the Kankas' to ensure its passage is further addressed in Section III of this comment, *infra*.

37. *Id.* The term "articles" as used in Timmendequas' motion was defined to include "stories, columns, cartoons, advertisements and letters to the editor." *Id.* at 73 n.2.

present an extreme hardship to Megan's parents.³⁸ While the Supreme Court "cautioned newspapers to refrain from the inflammatory reporting demonstrated" by the two Trenton papers, it refused to reverse on the basis of pre-trial publicity.³⁹ Ultimately, and despite several dissents by various justices, the New Jersey Supreme Court affirmed Timmendequas' conviction for murder, the related offenses and the death sentence imposed by the jury.⁴⁰

III. THE ENACTMENT OF MEGAN'S LAW AND ITS APPLICATION

A. *The Enactment of Megan's Law in New Jersey*

Following Megan's brutal murder in 1994, Richard and Maureen Kanka, along with their neighbors, were shocked and outraged to learn of Jesse Timmendequas' previous convictions for sexual offenses against young children.⁴¹ In spite of their grief over Megan's death, the Kanka's quickly began to campaign for laws requiring notice to the surrounding community when a convicted sex offender moves into that community following release from prison.⁴² Within three months of Megan's tragic death, New Jersey's governor, Christine Todd Whitman, signed such legislation into law.⁴³

The rationale for New Jersey's Megan's Law, as it is popularly known, is that sex offenders, particularly those who commit "predatory acts against children," pose a danger of recidivism.⁴⁴ The statute requires that anyone who has been "convicted, adjudi-

38. *Id.* at 74-75. The jury was ultimately selected from Hunterdon County, and while "concluding that there is a realistic likelihood of prejudice from pretrial publicity . . . the court recognized the importance of protecting the victims' rights." *Id.* at 75 (internal quotations omitted). In 1991, New Jersey voted to approve a Victim's Rights Amendment to the New Jersey Constitution which provides that a victim, defined to include the nearest relative of the victim of a criminal homicide, "shall not be denied the right to be present at public judicial proceedings . . ." *Id.* at 75-76 n.5.

39. *Id.* at 77.

40. *Timmendequas*, 737 A.2d at 123.

41. Court TV Casefiles, *supra* note 12.

42. CNN Interactive, *supra* note 11.

43. Joseph F. Sullivan, *Whitman Approves Stringent Restrictions on Sex Criminals*, N.Y. TIMES, November 1, 1994, at B1. Governor Whitman signed the bill on October 31, 1994, almost three months to the day after Megan's disappearance on July 29, 1994. *Id.* Whitman later served as the Administrator of the United States Environmental Protection Agency, a cabinet position under President George W. Bush, until her resignation on June 27, 2003. See CNN.com/Inside Politics, *Text of Whitman letter of resignation*, May 21, 2003, at <http://www.cnn.com/2003/ALLPOLITICS/05/21/whitman.letter/index.html> (last visited November 19, 2003).

44. N.J. STAT. § 2C:7-1a (2002). A "recidivist" is defined as "[a] habitual criminal; a criminal repeater." BLACK'S LAW DICTIONARY 1269 (6th ed. 1990).

cated delinquent or found not guilty by reason of insanity for commission of a sex offense" must register with a state designated agency.⁴⁵ Despite the fear of recidivism, the legislators provided that a person registered as a sex offender could apply to the Superior Court of New Jersey to terminate their registration if they could demonstrate that they had not committed an offense within 15 years of their conviction or release, whichever occurred later, and if it was found to be unlikely that they would pose a threat to the safety of others.⁴⁶

Despite the popular misconception, New Jersey's law was not the first of its kind, but, due to Megan's tragic story and the subsequent trial of Jesse Timmendequas, it did generate the most public attention. Prior to Megan's death, at least 25 other states required convicted sex offenders to register with law enforcement officials upon their release from prison.⁴⁷ The factor that set New Jersey's law apart from other states and made the law appear particularly stringent is the requirement of community notification when a registered sex offender moves into or returns to a neighborhood.⁴⁸ Prior to its enactment, a handful of states had already struck down similar laws as unconstitutional due to the community notification requirement.⁴⁹

Although the rationale for Megan's Law is protection of children from sex offenders and their likely recidivism, the impetus was clearly Megan Kanka's tragic death. In testament to this fact, a subsection of the statute specifically states that "[t]his act and the system of registration and community notification . . . shall be known and may be cited as 'Megan's Law.'"⁵⁰

45. N.J. STAT. § 2C:7-2c (2002). A convicted sex offender must also re-register with the appropriate agency within 10 days of moving to a new address. N.J. STAT. § 2C:7-2d (2002).

46. N.J. STAT. § 2C:7-2f (2002). An exception to this termination is found where the individual has been convicted, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined under the statutes. N.J. STAT. § 2C:7-2g (2002).

47. Jerry Gray, *Sex Offender Legislation Passes in the Senate*, N.Y. TIMES, October 4, 1994, at B6.

48. See N.J. STAT. § 2C:7-8 (2002). This portion of the statute sets forth three levels of notification which are dependent upon the risk of "re-offense." *Id.* Where the risk is low, law enforcement in the area is notified. *Id.* If the risk is thought to be moderate, then organizations, such as schools and youth groups, are to be notified. *Id.* Finally, if the risk is determined to be high, the public is to be notified. *Id.*

49. Sullivan, *supra* note 43. At the time that New Jersey's statutes were passed, California, Illinois, Arizona, New Hampshire and Alaska had struck down similar statutes requiring community notification. *Id.* Washington was the only state that had upheld the requirement of community notification along with a registry of sex offenders. *Id.*

50. N.J. STAT. § 2C:7-19 (2002).

B. Federal Legislation

At the time that Megan was murdered in 1994, the Federal Omnibus Crime Bill was in the process of being passed by Congress.⁵¹ One portion of that bill was the Jacob Wetterling Crimes Against Children and Sex Offender Registration Act (hereinafter the "Wetterling Act").⁵²

Jacob Wetterling was an eleven-year old boy from St. Joseph, Minnesota, who, like Megan, was tragically taken from his family at a young age.⁵³ In October 1989, Jacob and his younger brother were returning home from a local convenience store with a friend when a man approached them and kidnapped Jacob at gunpoint.⁵⁴ Jacob was never seen again, and his kidnapper was never captured.⁵⁵ In response to their personal tragedy, Jacob's parents, much like Megan's parents would do a few years later, sought to focus attention on the plight of missing children and established a non-profit foundation to help meet this goal.⁵⁶

While promoting the Federal Omnibus Crime Bill in 1996, President Clinton made specific reference to the case involving Megan Kanka and noted the need for a community notification provision.⁵⁷ On June 22, 1996, in his weekly radio address to the nation, President Clinton made the following statement with regard to Megan's Law:

Nothing is more important than keeping our children safe. We have taken decisive steps to help families protect their children, especially from sex offenders, people who according to study after study are likely to commit their crimes again and again. We've all read too many tragic stories about young

51. See Jacob Wetterling Foundation, *History of the Jacob Wetterling Act*, at http://www.jwf.org/jwf_jwact_history.html (last visited March 3, 2003). The legislation was passed on September 13, 1994. See 42 U.S.C. § 14071 (2002).

52. Jacob Wetterling Foundation, *Jacob's Story*, at http://www.jwf.org/jacobs_story.html (last visited March 3, 2003). This legislation was subsequently codified at 42 U.S.C. § 14071. See also 42 U.S.C. § 14071 (2002).

53. See Jacob Wetterling Foundation, *Jacob's Story*, at http://www.jwf.org/jacobs_story.html (last visited March 3, 2003).

54. *Id.* Jacob's kidnapper ordered all three boys to lie down on the ground, however, after asking each boy his age, he instructed Jacob's friend and brother to run into the woods. *Id.* When the boys looked back, Jacob and the man had disappeared. *Id.*

55. *Id.*

56. *Id.* The Jacob Wetterling Foundation was incorporated in February 1990 and its stated goal is to "provide information and support to victim families throughout the community." *Id.*

57. Sullivan, *supra* note 43.

people victimized by repeat offenders. That's why in the crime bill we required every state in the country to compile a registry of sex offenders, and gave states the power to notify communities about child sex offenders and violent sex offenders that move into their neighborhoods.

But that wasn't enough, and last month I signed Megan's law [sic]. That insists that states tell a community whenever a dangerous sexual predator enters its midst. Too many children and their families have paid a terrible price because parents didn't know about the dangers hidden in their own neighborhood. Megan's law [sic], named after a seven-year-old girl taken so wrongly at the beginning of her life, will help to prevent more of these terrible crimes.⁵⁸

The Federal version of Megan's Law was incorporated into the Wetterling Act and provides that "the designated State law enforcement agency . . . shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section . . ."⁵⁹

As part of the Megan's Law amendments to the Wetterling Act, a portion of each state's federal funding was made contingent upon their timely passage of similar laws.⁶⁰ Under these provisions, any state which had not enacted similar legislation within three years of the amendment to the Wetterling Act would become ineligible for 10 percent of the federal funds which would otherwise have been allocated to that state under the Omnibus Crime Bill.⁶¹ Accordingly, by 1996, every state and the District of Columbia had enacted a version of Megan's Law legislation.⁶²

C. State Compliance with the Wetterling Act and its Megan's Law Component

Following the amendment of the Wetterling Act by the federal government, the individual states soon followed with their own

58. CNN, *President Clinton's Weekly Radio Address - June 22, 1996*, available at <http://www.cnn.com/US/9606/22/Clinton.radio/transcript.html> (last visited Jan. 10, 2003).

59. 42 U.S.C. § 14071(d) (2002). *See also* Megan's Law, May 17, 1996, P.L. 104-145, § 2, 110 STAT. 1345 (codified as amended at 42 U.S.C. § 14071).

60. *See* Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Oct. 3 1996, P.L. 104-236, § 9, 110 Stat. 3098 (codified as amended at 42 U.S.C. § 14071).

61. *Id.*

62. *Id.*

versions of Megan's Law legislation.⁶³ One initial problem faced by the federal government regarding the newly established notification guidelines was the creation of a system to monitor and assist the states with compliance.⁶⁴ In order to achieve the goals of Congress and assure compliance by the individual states, it seemed that the federal government would need to take an active role.

On February 2, 1997, Attorney General Janet Reno issued a press release regarding Megan's Law and the Justice Department's anticipated role in its application.⁶⁵ Attorney General Reno noted that the federal government intended to work as partners with the states, "providing guidance, information and resources," during the development of both notification programs and the individual state registry systems for sex offenders.⁶⁶ In addition to promising guidelines to the states to help them achieve compliance, the Attorney General also made reference to the National Sex Offender Registry that was being planned at President Clinton's direction.⁶⁷

As promised, the Justice Department issued guidelines for the states with regard to Megan's Law compliance on April 4, 1997.⁶⁸ According to Attorney General Reno, these guidelines were meant to "provide minimum national standards for states to follow in developing community notification systems for sex offenders," and furthermore, were intended to "ensure that members of the public . . . [could] protect their families by obtaining information about registered offenders."⁶⁹ The press release highlighted four main points on which the guidelines focused: 1) states would be required to release information about registered offenders to the public, not just law enforcement; 2) states would not be permitted to release information on a discretionary basis, but rather, would be required to release such information as necessary to protect the pub-

63. *Id.*

64. Press Release, U.S. Department of Justice, *Justice Department Releases Megan's Law Guidelines*, #97-140, Apr. 7, 1997, available at <http://www.usdoj.gov/opa/pr/1997/April97/140vaw.htm>. The guidelines eventually promulgated were meant to assist the states with the implementation of Megan's Law by providing them with minimum standards. *Id.*

65. Press Release, U.S. Department of Justice, *Statement of Attorney General Reno on Bureau of Justice Statistics Report on Sex Offenders*, #97-044, Feb. 2, 1997, at <http://www.usdoj.gov/opa/pr/1997/February97/044ag.htm>.

66. *Id.*

67. *Id.*

68. U.S. Department of Justice, *supra* note 64.

69. *Id.*

lic; 3) community notification would be applied to both child molesters and other sex offenders; and 4) states would have the option of adopting an "affirmative" approach through actual notification of neighbors or, in the alternative, by making sex offender information available to the public at their request.⁷⁰

Under the guidelines, states would also have the option to impose registration on previously convicted offenders.⁷¹ Moreover, the guidelines indicated that the Department of Justice had previously participated, and would continue to actively participate, in any litigation to defend the validity of the community notification requirements under the new law.⁷²

In March 1998, the United States Department of Justice's Bureau of Justice Statistics established the National Sex Offender Registry Assistance Program.⁷³ This program was intended to further assist states in meeting the requirements of both the Wetterling Act and Megan's Law, and also allowed states to participate in the FBI's National Sex Offender Registry.⁷⁴ In April 1998, a project was initiated under the program to survey the states in order to evaluate and track their compliance with the registry requirements of the Wetterling Act and the federal version of Megan's Law.⁷⁵ The most recent survey, published in March 2002, highlighted the fact that as of February 2001, 366,000 convicted sex offenders were registered in the United States.⁷⁶

Since its enactment, another development has greatly impacted Megan's Law and the dissemination of information regarding convicted sex offenders to communities in which they reside: the

70. *Id.* See also Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 62 Fed. Reg. 39009 (filed July 21, 1997).

71. U.S. Department of Justice, *supra* note 64.

72. *Id.* The federal government has, in fact, kept its promise to the states by filing *amicus* briefs in cases filed in New Jersey, Washington, Connecticut and New York. See Dena T. Sacco, *Arguments Used to Challenge Notification Laws – and the Government's Response, National Conference on Sex Offender Registries*, NCJ-168965, April 1998, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ncsor.pdf>.

73. Devon B. Adams, *Summary of State Sex Offender Registries, 2001, Bureau of Justice Statistics Fact Sheet*, NCJ-192265, March 2002, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/sssor01.pdf>.

74. *Id.* The National Sex Offender Registry was created at the direction of President Clinton. See U.S. Department of Justice, *supra* note 64.

75. Adams, *supra* note 73.

76. *Id.* This number was compared to the figures cited for April 1998 at which time 277,000 sex offenders were registered. *Id.*

widespread use and availability of the Internet.⁷⁷ In fact, the Summary of State Sex Offender Registries indicates that as of March 2002, 35 states and the District of Columbia were providing access to sex offender registries via the Internet, with several other states planning websites in the near future.⁷⁸

IV. LEGAL CHALLENGES TO MEGAN'S LAW

A. *Three Theories of Megan's Law Challenges*

While the public has generally embraced Megan's Law and its goals, this legislation has not been without opposition, primarily from those convicted sex offenders to whom it applies.⁷⁹ Almost immediately after its enactment, challenges to Megan's Law began to arise in both state and federal courts and a pattern involving three dominant areas of Constitutional law emerged – the issues of punishment, privacy and due process.⁸⁰

1. *The Question of Punishment*

The issue of punishment has been described as the most frequent Constitutional challenge to Megan's Law legislation.⁸¹ Challenges in this area, typically brought as *ex post facto* and double jeopardy claims, have focused on a variety of arguments which suggest that Megan's Law punishes sex offenders that are required to register in that it subjects them to the possibility of public ridicule, ostracism, job discrimination, housing discrimination, and other forms of ongoing punishment.⁸² With regard to these specific claims, Sections 9 and 10 of Article I of the United States Constitution prohibit both state and federal government from passing "*ex post facto* laws," legislation that retroactively alters the criminal law.⁸³ Likewise, under the theory of double jeopardy,

77. See Julia Sommerfield, *Megan's Law Expands to the Internet*, August 17, 1999, at <http://www.msnbc.com/news/297969.asp> (last visited April 20, 2003).

78. *Id.* While access is available by Internet in most states, it should be noted that some states have set forth requirements which limit access to the information to those in particular communities and/or may assess a fee. *Id.* Furthermore, several states maintain lists which track the individuals who request access to the registry. *Id.* See also Adams, *supra* note 73.

79. Sacco, *supra* note 72.

80. *Id.*

81. *Id.*

82. *Id.*

83. U.S. CONST. Art. I, §§ 9, 10.

the Constitution also prohibits prosecuting a defendant twice for the same crime.⁸⁴

Opponents of these claims, typically state and federal government, argue that Megan's Law, particularly with regard to notification requirements, is intended to protect the public, not punish sex offenders.⁸⁵ These opponents also argue that most of the information regarding sex offenders is already a matter of public record due to legal proceedings which are a direct result of their crimes.⁸⁶

2. *The Right to Privacy*

Many sex offenders also attempt to argue that community notification laws violate their right to privacy by revealing personal information to the public at large.⁸⁷ In response, opponents suggest that there is no "privacy interest in the type of information States disseminate under notification laws, because it is public record information already exposed to public view."⁸⁸ In further support of this position, it is suggested that a "balancing test" would be applied to settle these types of disputes and as such, the public interest and the safety of potential victims would most likely outweigh a sex offender's right to anonymity.⁸⁹

3. *Due Process Considerations*

The final area which is often raised to challenge Megan's Law legislation involves considerations of due process. The Constitution prohibits government from depriving a person of "life, liberty or property," without due process of law.⁹⁰ Several of the sex offenders who have challenged Megan's Law have argued that community notification laws deprive them of their liberty and therefore, should not be imposed without "extensive, trial-like procedures."⁹¹ The defenders of Megan's Law generally argue that the mere labeling of a person as a criminal or statements regarding

84. U.S. CONST. amend. V.

85. Sacco, *supra* note 72.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. U.S. CONST. amend. V and amend. XIV, § 1. There are two clauses in the Constitution which deal with due process: the Fifth Amendment, which applies to the federal government, and the Fourteenth Amendment, which is applied to the states. *See id.*

91. Sacco, *supra* note 72.

crimes committed by that person do not infringe on Constitutional rights.⁹²

B. Case Law Decisions Regarding Megan's Law

1. New Jersey's First Challenge to Megan's Law

One of the first cases to address the constitutionality of Megan's Law and the community notification requirement it imposes was *Doe v. Poritz*, decided by the New Jersey Supreme Court in 1995.⁹³ In *Doe*, the plaintiff sought an injunction against application of the registration and notification laws, alleging that their application would constitute punishment, invasion of privacy, and violate procedural due process.⁹⁴ The plaintiff contended that he was a first-time offender who had successfully completed treatment, that he had been paroled and had been living and working within a community for some time, and furthermore, offered proof that should his conviction be subject to community notification, he would lose his job.⁹⁵

The court first addressed the challenges on the basis of punishment. Following a review of the relevant case law, the court concluded that "a statute that can fairly be characterized as remedial, both in its purpose and implementing provision, does not constitute punishment even though its remedial provisions have some inevitable deterrent impact."⁹⁶ The court went on to state that absent an intent to punish, a law does not become punitive simply because of its impact.⁹⁷ The court also looked to the legislative history regarding New Jersey's Megan's Law to determine the intent of the legislature relating to punishment of sex offenders.⁹⁸ The court found that the law was "clearly and totally remedial in

92. *Id.*

93. *Doe*, 662 A.2d 367 (N.J. 1995). "Doe," using a fictitious name, brought suit individually and on behalf of all others similarly situated. *Id.*

94. *Id.* at 380. The New Jersey statutes at issue in this case are discussed in Section III.A. of this comment and its accompanying notes.

95. *Id.* It is interesting to note that the plaintiff in this case was treated at the Avenal Adult Diagnostic and Treatment Center, the same facility where Jesse Timmendequas had received treatment and counseling following his 1981 conviction for sex offenses against two small children. See Court TV Casefiles, *supra* note 4; CNN Interactive, *supra* note 11.

96. *Doe*, 662 A.2d at 388.

97. *Id.* at 387-88. The Court noted that their discussion of the law in this area would have to focus on federal cases, despite the fact that plaintiff based his constitutional challenges on both the federal and New Jersey Constitutions, because New Jersey had no relevant case law in this area. *Id.* at 388.

98. *Id.* at 404.

purpose," and that preventing danger to a community is a legitimate regulatory goal.⁹⁹

The plaintiff's challenge to Megan's Law on the basis of a right to privacy was next addressed. The Court determined that the Fourteenth Amendment protected at least two different privacy interests: confidentiality and autonomy.¹⁰⁰ The Court first examined plaintiff's expectation of privacy with regard to the information that would be disclosed under the registration aspect of Megan's Law and determined that when such information is readily available to the public or exposed to public view, there is no constitutional protection.¹⁰¹ Despite this view, the court did admit concerns regarding the revelation of the plaintiff's home address, noting that it should be clear that both the registration and notification laws were to be used "as a means of protection, not as a means of harassment."¹⁰² In order to resolve the perceived conflict between the right to private information and the individual's right to confidentiality, the court adopted a balancing test and found that the state's interest in protecting the public was both legitimate and substantial and therefore, no violation to the right of privacy existed.¹⁰³

With regard to plaintiff's due process challenge, the court explained that its analysis would first assess whether a liberty interest had been interfered with by the State, and second, whether the attending procedures were constitutionally sufficient.¹⁰⁴ The court determined that the registration and notification laws did trigger due process because they affected the plaintiff's liberty interests in both privacy and reputation.¹⁰⁵ In seeking to meet the requirements of due process, the court noted that, at a minimum, the plaintiff would need to be afforded notice and the opportunity to be heard.¹⁰⁶ As such, the court held that upon application, judicial review should be applied prior to release of information.¹⁰⁷

In conclusion, the court specifically noted that it was "sail[ing] on truly uncharted waters," as no other states had yet adopted

99. *Id.*

100. *Doe*, 662 A.2d at 406.

101. *Id.* at 407. The Court also pointed to the fact that New Jersey specifically guarantees public access to criminal court records in support of their position. *Id.*

102. *Id.* at 409.

103. *Id.* at 411-12.

104. *Id.* at 417.

105. *Doe*, 662 A.2d at 420.

106. *Id.* at 422.

107. *Id.* at 423.

such far-reaching statutes.¹⁰⁸ While noting that judicial review would be available upon application with regard to the due process challenges, the plaintiff's other constitutional challenges were ultimately rejected.¹⁰⁹ With regard to New Jersey's Megan's Law, the court opined that it was both rational and careful in addressing a "pressing societal problem," and that it was not what the drafters envisioned as an abuse of the government's power to punish.¹¹⁰

2. *Recent Decisions in the United States Supreme Court*

Applying counter-arguments similar to those employed in *Doe v. Poritz*, the United States Supreme Court has recently decided two cases involving challenges to Megan's Law.¹¹¹ The first of these cases, *Connecticut Department of Safety v. Doe*, questioned whether Connecticut's sex offender registry deprived registered sex offenders of a liberty interest in violation of the due process clause.¹¹² The latter, *Smith v. Doe*, questioned whether the registration requirement set forth by the state of Alaska was a retroactive punishment in violation of the *ex post facto* clause.¹¹³ As will be discussed below, in each of these cases, Megan's Law was upheld by the Supreme Court, despite assertions of implied violations of constitutional rights.

a. *Connecticut Department of Public Safety v. Doe*

Connecticut's Megan's Law provides that all convicted sex offenders must register with the Department of Public Safety ("DPS") by providing personal information, including their name, address, photograph and a DNA sample for a period of 10 years, or for life in the case of a sexually violent offense.¹¹⁴ The respondent in this matter, "John Doe," was a convicted sex offender who was subject to the registration requirements of Connecticut's Megan's Law.¹¹⁵ Prior to the filing of the underlying lawsuit, the state op-

108. *Id.* at 422.

109. *Id.* at 423.

110. *Doe*, 662 A.2d at 422-23.

111. *Connecticut Dep't of Public Safety v. Doe*, 538 U.S. 1 (2003); *Smith v. Doe*, 538 U.S. 84 (2003).

112. *Connecticut Dep't of Public Safety*, 538 U.S. at 3-4.

113. *Smith*, 538 U.S. at 89.

114. *Connecticut Dep't of Public Safety*, 538 U.S. at 4-5.

115. *Id.* at 5-6.

erated an Internet website which allowed the public to access information on sex offenders by entering a zip code or town name.¹¹⁶

The District Court granted summary judgment on plaintiff's due process claim, certified a class of persons similarly situated to Doe, and permanently enjoined Connecticut's public disclosure provisions, which resulted in the shutdown of the DPS website regarding sex offenders.¹¹⁷ The Second Circuit affirmed the decision, finding that the due process clause of the United States Constitution entitles class members to a hearing before information is disseminated to the public.¹¹⁸ Despite a disclaimer on the website that indicated DPS had made no determinations as to whether individuals were currently dangerous, the Court of Appeals also found that because the law implied that the offender was dangerous, a "liberty interest" was implicated.¹¹⁹ Furthermore, the court expressed the opinion that the registration requirements were "extensive and onerous."¹²⁰

The United States Supreme Court granted certiorari and heard oral arguments in November 2002.¹²¹ In an opinion delivered by Chief Justice Rehnquist, the Court referred to its 1976 decision in *Paul v. Davis*,¹²² and reiterated that "mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest."¹²³ Justice Rehnquist went on to state that the fact that the plaintiff was seeking to prove that he currently does not present a danger to society was inconsequential.¹²⁴ The opinion stresses the fact that all sex offenders must be publicly disclosed and, barring demonstration by the plaintiff that the substantive rule of law is defective due to a constitutional conflict, a hearing would be useless.¹²⁵ The Court concluded that because the question was argued as one of procedural due process, the issue was

116. *Id.* at 5.

117. *Doe v. Connecticut Dep't of Public Safety*, 271 F.3d 38 (2d Cir. 2001).

118. Associated Press, *supra* note 5.

119. *Doe*, 271 F.3d at 57-60.

120. *Connecticut Dep't of Public Safety*, 538 U.S. at 6.

121. *Id.*; see also Associated Press, *supra* note 5.

122. 424 U.S. 693 (1976).

123. *Connecticut Dep't of Public Safety*, 538 U.S. at 6-7. Chief Justice Rehnquist was joined by Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg and Breyer. *Id.* at 2. Justice Souter wrote a concurring opinion, in which Justice Ginsburg joined, while Justice Stevens filed an opinion concurring in the judgment. *Id.*

124. *Id.* at 7.

125. *Id.*

not properly before the Court, and the opinion would not address the question of whether substantive due process was violated.¹²⁶

Justice Scalia, in a concurring opinion, stated that even if Connecticut's law implicated a liberty interest, he would not find that the plaintiff was entitled to a hearing under a substantive due process argument.¹²⁷ Using the requirement that a licensed driver must be 16 years of age as an analogy, Justice Scalia stated that "a convicted sex offender has no more right to additional 'process' enabling him to establish that he is not dangerous than . . . a 15-year-old has a right to 'process' enabling him to establish that he is a safe driver."¹²⁸

b. Smith v. Doe

In a companion case to *Connecticut Department of Public Safety v. Doe*, the Supreme Court also delivered its opinion in *Smith v. Doe I* on March 5, 2003.¹²⁹ This opinion, authored by Justice Kennedy, addressed the question of whether Alaska's version of Megan's Law was a retroactive punishment prohibited by the *ex post facto* clause of the United States Constitution.¹³⁰

Like many other state versions of Megan's Law, Alaska's law is comprised of two retroactive components: a registration requirement and a notification provision.¹³¹ In addition to providing name, aliases, identifying features, address, place of employment, date of birth, conviction information, driver's license number, information about vehicles to which they have access, and post-conviction treatment history, under Alaska's version of Megan's Law, a convicted sex offender must also submit to fingerprinting

126. *Id.* at 8.

127. *Id.* at 8-9 (Scalia, J., concurring).

128. *Connecticut Dep't of Public Safety*, 538 U.S. at 8-9 (Scalia, J., concurring).

129. *Smith*, 538 U.S. 84. The original plaintiffs to this action included John Doe I, who had been accused of sexually abusing his daughter, his wife, Jane Doe, and John Doe II, who pled *nolo contendere* to sexual abuse of a 14-year-old. *Id.* at 9. Both Doe I and Doe II were convicted of sexual offenses against minors and were released from prison in 1990, following completion of a rehabilitative program. *Id.* Despite the fact that both were convicted before Alaska enacted its version of Megan's Law, they were still deemed to be covered by it and were required to register. *Id.*

130. *Id.* at 89. Although this ultimately represents a 6-3 decision, it does not appear to have been without controversy. Justice Kennedy was joined by Justices Rehnquist, O'Connor, Scalia and Thomas. *Id.* at 88. In addition, Justice Thomas wrote separately. *Id.* Justice Souter wrote an opinion concurring in the judgment. *Id.* Justice Stevens filed a dissent, as did Justice Ginsburg, who was joined by Justice Breyer. *Id.*

131. *Id.* at 90.

and photographing.¹³² Although some information is kept confidential, Alaska, like Connecticut, has elected to utilize the Internet to publish that information which is not held confidential.¹³³

In order to evaluate the statute at issue, the Court stated that it had to determine whether the intention of the legislature was to impose punishment.¹³⁴ If such an intent was found, the inquiry would necessarily end. However, even if the statute was found to be "civil and nonpunitive," the Court would still need to determine whether the statutory scheme was "so punitive either in purpose or effect as to negate [the state's] intention to deem it civil."¹³⁵ Despite the fact that Alaska's statute was partially codified in the state's criminal procedure code, the Court determined, as did the District Court and the Court of Appeals before them, that the Alaska legislature intended "to create a civil, nonpunitive regime."¹³⁶

The opinion then moved on to evaluate the effects of the Alaska statute and, in doing so, looked to the 1963 case of *Kennedy v. Mendoza-Martinez*¹³⁷ for guidance.¹³⁸ In *Mendoza-Martinez*, the Court had set forth seven factors which provided the current Court with "useful guideposts" for evaluating *ex post facto* claims, despite the fact that they were "neither exhaustive nor dispositive."¹³⁹ Among the factors identified by the Court as potentially relevant to their analysis were questions as to whether the regulatory scheme "has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose."¹⁴⁰

132. *Id.*

133. *Id.* at 90-91. The information made available to the public via the Internet includes "name, aliases, photograph, description, description and license information of motor vehicles, place of employment, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a statement as to whether the offender . . . is in compliance . . . or cannot be located." *Id.*

134. *Smith*, 538 U.S. at 92.

135. *Id.* (citing *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)).

136. *Id.* at 92-95. The respondents, apparently seeking to "cast doubt" on the nonpunitive intent of the Act, had pointed to language in Alaska's Constitution which identified protection of the public as one of the purposes of criminal administration. *Id.* at 93. The Court stated in response to this argument that "[t]he location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one." *Id.* at 94.

137. 372 U.S. 144 (1963).

138. *Id.* at 1149.

139. *Smith*, 538 U.S. at 97 (citations omitted).

140. *Id.*

Using this framework to assess the nature of the Act with regard to punishment, the Court began its analysis by looking at whether the Act had been regarded historically as punishment.¹⁴¹ Respondents contended that the Act, particularly the notification requirement, resembled “shaming punishments” of the colonial period.¹⁴² Respondents pointed to colonial punishments in which offenders were required to stand before the public with a sign identifying their crime as well as incidents where serious offenders were banished from their community.¹⁴³ In doing so, the Respondents were attempting to argue that Alaska’s compulsory registration and notification requirements had a similar effect.¹⁴⁴

In response to these contentions, the Court stated that respondents arguments were misleading, and rationalized that the “stigma” that results from Alaska’s Megan’s Law “results not from public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public.”¹⁴⁵ The Court went on to note that the global reach of the Internet does not render the notification procedure punitive where the purpose and effect of notification is public safety.¹⁴⁶ Moreover, the Court found that such widespread access is necessary and that the “attendant humiliation is but a collateral consequence of a valid regulation.”¹⁴⁷

The Court then considered the question of whether the Act imposed an affirmative disability or restraint on the respondents.¹⁴⁸ At the outset, the Court noted that the Act imposed no physical restraints on sex offenders which would resemble actual imprisonment, nor did it restrain registrants from freely changing jobs or residences.¹⁴⁹ The respondents had argued that the Act was “likely to make [them] completely unemployable” as employers would not want to risk losing business because of the stigma.¹⁵⁰ The Court determined that this was pure conjecture and pointed to the fact that only one incident of “community hostility” against a registered sex offender had occurred in the seven years since

141. *Id.*

142. *Id.* at 97-98.

143. *Id.* at 98.

144. *Id.*

145. *Smith*, 538 U.S. at 98.

146. *Id.* at 99.

147. *Id.*

148. *Id.* at 99-100.

149. *Id.* at 100.

150. *Id.*

Alaska's Megan's Law had gone into effect.¹⁵¹ The Court went on to add that due to public knowledge of the crime committed by this individual, this could have occurred despite the Act.¹⁵²

The Court was also unimpressed by argument which suggested that requiring offenders to periodically update their information constituted an affirmative disability, and in response, pointed out that updates were not required to be made in person.¹⁵³ The Ninth Circuit had been persuaded that the registration requirement was "parallel" to probation and supervised release in that it imposed a restraint on sex offenders.¹⁵⁴ While acknowledging that this argument had "some force," the Court ultimately rejected it, finding that these individuals were still free to move, live and work as they wished, without supervision.¹⁵⁵

The Court also determined that the Ninth Circuit had erred by concluding that the registration requirements were retributive due to the fact that the Act was applied to all convicted sex offenders, without regard to future danger, and also because it failed to limit the number of persons with access to the information.¹⁵⁶ In support of their position, the Court pointed to high rates of recidivism in cases of sex offenders and to the fact that most "reoffenses" do not occur within the first few years, "but may occur as late as 20 years following release."¹⁵⁷ With regard to the Ninth Circuit's position that access to information was unlimited, the Court believed it significant that the notification system at issue was a "passive" one that required interested parties to seek access to the information.¹⁵⁸

Based upon their analysis and the respondents failure to demonstrate that the Act was in fact a civil regulatory scheme, the Court determined that Alaska's Megan's Law was nonpunitive, and that its retroactive application to the respondents, and others

151. *Smith*, 538 U.S. at 100. See also *Doe v. Otte*, 259 F.3d 979, 987-88 (9th Cir. 2001). The Ninth Circuit referred to an incident in which one registered sex offender suffered community hostility and damage to his business after print-outs from the Internet site were distributed and posted on bulletin boards. *Id.*

152. *Smith*, 538 U.S. at 100.

153. *Id.* at 101.

154. *Id.* See also *Otte*, 259 F.3d at 987.

155. *Smith*, 538 U.S. at 101.

156. *Id.* at 102.

157. *Id.* at 103-04 (citation omitted).

158. *Id.* at 104-05. In addition, the Court felt that the warning that was displayed when the system was accessed was also significant in that it stated that individuals who used the system to commit criminal acts against others would be subjected to criminal prosecution. *Id.* at 105.

similarly situated, did not violate the *ex post facto* clause of the United States Constitution.¹⁵⁹ The Court subsequently reversed the judgment of the Ninth Circuit.¹⁶⁰

V. CONCLUSION

Since Megan Kanka's death in 1994, federal and state versions of the law which bears her name have been challenged; however, it appears, at least for now, that Megan's Law has survived those challenges and will continue to remain in effect. Despite this fact, the United States Supreme Court has seemingly left the door open with regard to attacks on Megan's Law alleging violation of substantive due process and equal protection.

As Justice Scalia has noted, a challenge to substantive due process will require its proponent to establish that Megan's Law implicates a fundamental right.¹⁶¹ Similarly, as noted by Justice Souter, not only does the possibility exist that Megan's Law will be challenged on a substantive due process ground, but it is also clear that an equal protection argument may be on the horizon.¹⁶²

Maureen Kanka stated after Megan's death: "If we had been aware of [Timmendequas'] record, my daughter would be alive today."¹⁶³ While the future of Megan's Law is somewhat uncertain, what is clear at this time is that both the state and federal enactments, and the accompanying notification requirements, have brought issues of child safety and protection into the forefront. It is equally clear that the purpose of this legislation, the protection of children, is thought by many to be of a compelling nature, but

159. *Smith*, 538 U.S. at 105-06.

160. *Id.* at 106.

161. *See Connecticut Dep't of Public Safety*, 538 U.S. at 8-9 (Scalia, J., concurring). An attack on Megan's Law alleging violation of a fundamental right will trigger strict scrutiny, thereby requiring the government to show that the law is necessary to achieve a compelling or overriding government purpose. Barron, Jerome A. & C. Thomas Dienes, *CONSTITUTIONAL LAW*, 188-92 (4th ed. 1999).

162. *Id.* at 1165-66 (Souter, J., concurring). With regard to both issues, Justice Souter stated: "Today's case is no occasion to speak either to the possible merits of such a challenge or the standard of scrutiny that might be in order when considering it. I merely note that the Court's rejection of respondents' procedural due process claim does not immunize publication schemes like Connecticut's from an equal protection challenge." *Id.* at 1166.

163. Mission Statement of the Megan Nicole Kanka Foundation, at <http://www.megannicolekanka foundation.org/mission.htm> (last visited on March 11, 2003).

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whether the Supreme Court ultimately agrees, we will have to wait and see.

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