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## Deborah's law

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# **Deborah's Law: The Effects of Naming and Shaming on Sex Offenders in Australia**

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## **Abstract**

Community notification laws for sex offenders are now widespread in the USA and there is considerable interest in introducing them in Australia. Along with these public moves to name and shame, there has been a parallel increase in private forms of naming and shaming through 'outing' of sex offenders. This article examines both public and private notification to conclude from the few studies available that they fail to achieve their goals and lead to significant unintended consequences. The article analyses *The Australian Paedophile and Sex Offender Index* (Coddington, 1997), a prime exemplar of the private domain of notification, to explore a range of variables (offender demographics, offence details, sentences, previous convictions and victimology) and concludes that it is unrepresentative and has criminogenic potential. The article summarises direct consequences of notification actions that include possibilities for vigilantism, effects on treatment and rehabilitation, and displacement. Finally, it examines the theoretical frameworks in which notification laws have been couched – restorative justice and criminological notions of shame and degradation – to conclude that notification laws are not supported by these theoretical paradigms.

## **Introduction**

Sex offenders have received 'rough justice' in Australia in recent years, including harassment and brutal vigilante attacks, some of which have resulted in death:

- The former mayor and a local shopkeeper in Wollongong were bashed and murdered allegedly by vigilantes following publicity about their supposed paedophile interests (Wyre, 1998).
- An inmate was stomped to death in Junee gaol in NSW in 1998 allegedly because this former school headmaster was convicted of child sex offences (Wyre, 1998).

'Rough justice' has also come in the form of sex offenders being singled out for specialised treatment in terms of political or justice options:

- Former Democrats leader, Don Chipp, suggested that convicted paedophiles should be tattooed on their foreheads as a warning that 'this person is not only dangerous, but will remain dangerous' (*Sunday Mail* 18 February 1997).
- In Queensland prisons, those convicted of sex-related charges must admit their guilt (whether they claim innocence or not) to enrol in rehabilitation programs that in turn allow them to receive lower classifications and move toward release (*Courier Mail* 11 May 1999).

And, 'rough justice' is certainly in evidence through increased public and criminal justice focus on sex crimes:

- In NSW Justice Wood released his report on the Royal Commission into Paedophiles; while in Queensland a Crime Commission was established to address perceived inadequacies in investigating allegations of paedophile activities (*Canberra Times* 30 August 1997).
- The Australian Bureau of Criminal Intelligence and the Australian Federal Police have developed databases of convicted sex offenders and those suspected of paedophilia (*Canberra Times* 30 August 1997).

A further example of 'rough justice' is *The Australian Paedophile and Sex Offender Index* written and published by New Zealand-based journalist Deborah Coddington. The Index is an alphabetical listing of those convicted and calls for tougher punishment and vilification of all sex offenders. While no direct connection can be

drawn, it is probable that the Index is one of many factors to influence recent calls for the introduction of community notification laws in several Australian jurisdictions<sup>1</sup>.

This push to focus on children and sexual matters has come from a number of quarters: the medical profession who acknowledged the physical abuse of children; feminists encompassing children as part of the women's movement; new right advocates against abortion or pornography; as well as grassroots groups like mothers against drink-drivers, parents of missing children, and the Megan's Law proponents (Best, 1990). In recent years 'threats to children have had a good deal of success in the social problems marketplace' (Best, 1990, p.16). The claims-making by this new wave of 'child savers' has found fertile ground and is attributed to broader movements for social reform, cultural beliefs about childhood and to rising fears of threat fed by assertions of an increasing incidence of sexual offending.

While it appears that there has been an overall increase of sexual offending in the past decade or so (Wilson, 1998), the incidence of both child and adult sexual crimes is difficult to determine. One jurisdictional analysis suggests that reported sex offences doubled between 1994 and 1998 (CJC, 1999, p.vii), while Australian Bureau of Statistics (1998; 2000) figures suggest that rates per 100,000 increased less dramatically from 71.32 to 77.71 between 1994 and 1998. By comparison, an AIC study found a rate of sexual incidents of 184.4 per 1,000 for females 16 years and over in 1988, yet the follow-up study in 1991 yielded victimisation rates reduced by over 70% (Wilson, 1998). Similar declines in the 1990s have been observed in the USA (see Hinds, 1997).

Clearly the variations in findings can be attributed to differing methodologies and the social influences on reportability rates. Reporting is probably increasing so observed rises in figures are more likely to be because of an increased willingness to report (Miller, 1997). In addition, the increase in reportability is most likely to be evident in crimes involving children than in adult sexual assault (Wilson, 1998). In the end, we are left with a vague empirical picture that between one and 10% of child sex crimes are reported (Naylor 1984); that child sex offence convictions comprise only 2% of all sexual offences (Clausen, 1996); and that sex crimes roughly 'constitute 7.9% of all violent crimes and about 3.8% of all crimes' (Wilson, 1998, p.3).

The purpose of this article is to address 'rough justice' for sex offenders by examining notification and its role in the justice system. The first section deals with public domain notification such as registration databases and community notification legislation and discusses current developments in Australia. The second section deals with the private domain of notification, where the Coddington Index is utilised as an exemplar to explore characteristics of the listed offenders, victims, offence details and sanctions; its representativeness; and how it has influenced other private notification actions. The third section deals with the consequences of both public and private notification such as the likelihood of vigilantism, the impact on treatment for sex offenders, the costs involved and the criminal justice impacts. It concludes with an examination of how notification fits with restorative or community justice principles in a broader sense, and how notification fits with shaming in a more narrow theoretical context.

### **Megan's Law and Public Notification**

Community notification and registration are most commonly used with sex offenders (Petrosino and Petrosino, 1999), for they tend to feed off the rhetoric of a threatened public and images of the predatory stranger especially where child victims are concerned (James, 1998). The images perpetuated in the mass media and socially constructed in the public perception (Surette, 1994) persistently argue that sex offenders are different, that they cannot be cured, that they have high recidivism rates, that they are a psychological and physical menace, and that they prey on the vulnerable members of our community (Pincus, 1998). Yet these conclusions are based on myopic media and public attention to sensationalist or stranger attacks (Wilczynski and Sinclair, 1999; Soothill and Walby, 1991), rather than the more frequently occurring domestic and familial attacks that are omitted from the journalistic vista (see Howe, 1998).

In the United States most community notification or registration laws were passed in the early 1990s immediately following high profile violent sexual acts. In Washington the legislation followed the sexual mutilation of a seven-year-old boy, in Minnesota notification laws were developed after an eleven-year-old boy was abducted; and in New Jersey the legislation was passed three months after seven-year-old Megan Kanta was sexually assaulted and murdered by a neighbour who had a history of sexual offending against children (Hinds, 1997)<sup>2</sup>.

Public domain or state-controlled notification, comes in two basic forms. The first is registration that entails the reporting by offenders to justice agencies in order to monitor their movements (Kabat, 1998). Registration should not be confused with community notification because the records in the former generally are not made public (Kabat, 1998)<sup>3</sup>. Registration is usually seen as unproblematic because such data are already held, and able to be retrieved by police (Petrosino and Petrosino, 1999:2). Indeed, a number of commentators have suggested that registration databases do not go far enough, in the sense that their information is not broad enough, not detailed enough and not updated with sufficient regularity to be of assistance to the police (Petrosino and Petrosino, 1999). In this way it is proposed that registration databases could be used more effectively by law enforcement in a 'criminal profiling' kind of way to assist in narrowing the pool of suspects in unsolved cases.

The second form of public notification is termed 'community notification'. It comes in a variety of forms such as news releases and postings on the internet, calling community meetings and targeting specific organisations, groups or local areas to give advice about released sex offenders (Zevitz and Farkas, 2000). There is great variability in the way that these laws are applied across jurisdictions. The length of the notification process, for example, can range from five years to life, with the majority stipulating terms of around ten years (Kabat, 1998). There is also variation in the way that States categorise offenders. Some States utilise a three-tiered system where sex offenders are rated at low, medium or high risk and the notification requirements vary according to that rating, as does the length of time that an offender must stay on the records (NCJA, 1997).

There are likewise variations in the level of access to the information and the way that it is distributed (Kabat, 1998). These features include: who has access or who is notified; whether the access is proactive or only upon request; whether notification is

discretionary or mandatory; what kinds of appeal processes are available to offenders; and what kinds of information are released. In some jurisdictions, for example, the name and address are supplied; others provide just general locations at the suburb or local block level; while others give a full description of the person including a photograph (Kabat, 1998).

In Australia the issue of sex offender notification has not yet reached the legislative stage. There has however been considerable effort, particularly through the mass media, to open the debate. At the federal level, Prime Minister John Howard, has 'pledged a national blitz' on 'child molesters' by establishing a DNA database and register as part of CrimTrac (*Courier Mail* 17 September 1998). In Queensland the member for Whitsunday pushed for the establishment of a police register of sex offenders despite concerns from legal and civil libertarian groups about privacy issues (*Courier Mail* 28 February 1998)<sup>4</sup>. Additionally, the Queensland Crime Commission is further examining a proposed version of Megan's Law legislation for that State (*Courier Mail* 10 May 1999)<sup>5</sup>. So, while public community notification laws are not yet enacted in Australian jurisdictions, it is clear that there is the same groundswell of grassroots, official and political opinion as occurred in the USA that is pushing the debate down the American pathway. However, what is already operating in Australia are private forms of notification exemplified by the Coddington Index<sup>6</sup>.

### **Deborah's Law and Private Notification**

Coddington's Index has been described as an 'unlovely object' that has a 'shiny acid-yellow cover on which is depicted a teddy bear, not exactly spread-eagled but with arms outstretched in an attitude of helplessness' (Walker, 1997, p.22). Its extent is 303 pages of fairly dense text covering 650 alphabetically listed entries. There is an insert containing 30 photographs and two cross-referenced listings by State and occupation. In essence, the entries provide information about the offender, a short synopsis of the offence and a summary of the disposition in about half a page. The length of the case descriptions varies from 12 to 371 words ( $\xi = 115$ ), with the more sensationalist cases being described in greater detail. There is also a 22-page introduction explaining the rationale behind the publication of the Index and the methodology used to collect the information.

The method employed was that Coddington sifted through newspapers to locate case names and then contacted the courts for further information. This approach is justified by noting that it draws only on publicly available information from media and law reports and therefore is not encouraging innuendo or wild allegations (*The Australian* 18 February 1997). So the scope of the Index is intended to include all those the author has 'been legally able to warn you about' (Coddington, 1997, p.23)<sup>7</sup>. Coddington suggests that there was a need for a directory of this kind in Australia because of an evident lack of concern about sex offending, with the implication being that there is greater coverage in the mass media given to international cases while the problem is ignored in the local arena<sup>8</sup>. The explicitly stated rationale is 'to prevent sex attacks, on both adults and children, before they happen' (1997, p.23) and because the author 'wanted the general public to confront the horror of sexual abuse, [to] bring it out into the open, [and] then change some of the apathetic attitudes of those who still believe this doesn't happen' (1997, p.8).

Coddington is firmly of the view that anyone convicted of a sex offence can never absolve their debt for 'they can never pay back what they've taken... and their lives can never be the same' (*The Australian* 18 February 1997). Her view of punishment is that 'a conviction will be a stain on the offender's reputation for ever, that life will never be as it was when their record was unblemished', and that individuals named in her Index are seen as having forfeited their 'rights' because they have 'breached, in some way, another person's right to pursue their own privacy and happiness' (1997, p.7). Further, the author concedes that she did not consider the effect that her publication may have on victims or offenders, but she infers that it has been able to 'reassure victims that they are not to blame' (1997, p.8) while concurrently and unapologetically noting that it may indeed jeopardise offender rehabilitation.

The present analysis isolated a range of variables to provide an overall description of cases captured by the Index<sup>9</sup>. The majority of the entries concern male offenders (99%), with only six females (two are listed as co-offenders and not separately listed and one is listed separately as an unnamed offender). Their ages ranged from 16 to 84 years, with over half being between the ages of 31 and 60. The largest representation of entries came from Victoria (27.7%), followed by New South Wales (19.2%) and Queensland (17.8%)<sup>10</sup>. The majority of cases fail to specify a year for the offence, with 28% in the years 1990-96, 10% in the 1980s and a small number (4%) in the 1970s or earlier. In 69% of cases there were multiple offences listed, but for the remainder it was either impossible to decipher or there was only one charge noted. In the majority of cases there is only one offender listed and it is assumed that they acted alone. Almost one-quarter of offenders listed are noted to have had some sort of previous conviction (not necessarily a sex offence).

Victims were predominantly female and tended to be young with 45.7% of victims being 16 or under. When the relationship between victim and offender was analysed it appears that 34% were committed by strangers, with 21.7% in a formal relationship that was often occupation-related (teachers, priests, sports coaches).

The range of offences covered by the Index is wide. They include: sexual murder, sexual assault, incest, obscene phone calls, a woman who had a 'lesbian affair' with a student, a case of consensual sex with a 14-year-old student, and an unnamed female who stood guard outside a van while her boyfriend raped a young woman. To standardise the range of offence categories across jurisdictions, the Queensland Criminal Code (Edwards et al., 1992) was used to classify offences. In over half the cases (56.3%) the offence is sexual assault or attempted sexual assault, followed by forms of indecent assault and indecent dealings (35.1%), other incidents such as possession of pornography or exposure (5.7%), and homicide (5%). In most cases (60%) the offenders entered a guilty plea and most (81.4%) received custodial dispositions with sentence lengths up to five years (57%), between 5 and 20 years (36%), and over 20 years to life (7%).

With respect to convictions and sentencing, clearly the Index represents the more serious end of the sexual offending spectrum with over half the cases involving sexual assault. The majority received imprisonment sanctions although most of these were for less than five years. Generally, research suggests that only about one-quarter of cases result in prosecution and this is more likely where the victim is a child and where the offender is an acquaintance (Hood and Boltje, 1998). Gebhard et al (1965,

p.710) also note that, with the exception of non-contact offences most sex offenders receive ‘fairly long sentences’.

### **INSERT TABLE 1 ABOUT HERE**

Overall, the Index includes mostly male offenders who are in their middle years<sup>11</sup>. This is in accord with the majority of studies that suggest that offenders are generally male and when females are involved it tends to be with a male accomplice (Kenny, 1997; Watkins, 1997). The Index also appears to parallel known cases with respect to victim sex, where about 70-75% of victims are female (Oates, 1997; Miller, 1997; Goldman and Goldman, 1988; Abel et al., 1987; Cunneen, 1997). However, it is less representative of victim age where general studies of sex offending yield higher adult victimisation figures (Gebhard et al., 1965) than is found in Coddington’s work. With respect to offender age, many studies suggest that most are convicted in their adolescence or early 20s, although incest offenders and those whose victims are children are usually more than 30 years (Gebhard et al., 1965; Watkins, 1997). So that the offenders listed in the Index tend to be an older cohort, this may be explained by the larger proportion of child sex cases included in the book.

With respect to child sex offences only, one study showed that fathers were offenders in one-third of cases and adults who were not related were offenders in 44% of cases (*Sydney Morning Herald* 11 May 1999). Another suggests that for substantiated cases parents or responsible adults are perpetrators in about 35% of cases, siblings or other relatives 23% and friends and neighbours 28%, with possibly 8% classed as strangers (see Watkins, 1997). Kenny (1997) gives the most reliable picture and reports that there were 5,000 substantiated cases in Australia in 1994 with a ratio of 80:20 of known versus stranger perpetrators. While a large percentage of sexual offences are known to be intra-familial, partner-related or perpetrated by a family friend (Tomison, 1995), Coddington includes only a small percentage (17.1%), with only 1% being family. Of course the above picture is convoluted regarding whether one is talking about sex offences generally or only child sex offences, or about paedophilia or incest.

While Coddington would no doubt argue that her Index contains only the tip of the iceberg of sexual offences, it is important to note that by concentrating on this ‘tip’ the real picture of sexual crimes becomes lost. Coddington’s use of the media as her data source distorts the reality. Reporting of sexual offending tends to reinforce the stereotypes of predatory strangers rather than focusing on more prevalent incidents (see Howe, 1998). Indeed, there is a tendency to report only the sensational and atypical in child abuse cases (Wilczynski and Sinclair, 1999). In addition, the percentage of sexual crimes that is reported in the media does not reflect the actual number of sexual offences. Hood and Boltje (1998), for example, found that of 1,579 cases of child sexual abuse reported to government departments, 69% were assessed by police, 31% led to arrests and only 4% resulted in convictions. Also, there is a tendency for greater media coverage where the offender pleads guilty and for that coverage to be quite strongly negative (Cunneen, 1997).

Our examination here also addresses the consequences of the Index. Its publication has spurred the reporting of excerpts in newspapers: for example, in Townsville eight names were published of identified locals; and in Wollongong thirteen names of



locals were published (*The Australian* 22 February 1997). Several government agencies (such as the Federal Privacy Commissioner and the Australian Bureau of Criminal Intelligence) have criticised the Index saying that it could be misused in this way (*Daily Telegraph* 16 April 1997). This is a somewhat anomalous repercussion as the Index itself was initially drawn from newspaper reports of court cases.

The Index has also encouraged copy-cat publications so that two groups, the Movement Against Kindred Offenders (MAKO) and For Love of Children (FLOC), are preparing similar lists to be placed on the internet. The MAKO founders have claimed that they rely on Coddington's Index for their notification activities (*Courier Mail* 2 February 2000). MAKO has been active throughout the country with 42 communities apparently having been notified of addresses of 'known paedophiles' (*Courier Mail* 2 February 2000). In Queensland they recently did a letterbox drop in one suburb, where it was later revealed that the offender was still in gaol (*Courier Mail* 1 February 2000). They had previously targeted a convicted child sex offender in Victoria by distributing pamphlets containing details of past convictions as well as the name and current address (ABC, 1998, p.13).

While consequences of the private domain notification processes largely parallel those of the public domain they do suffer additional problems. Where information is posted online there is no responsibility on the provider to disclose their own details and so there is no accountability. There is also the likelihood that such notifications may contain information about non-convicted offenders, those who have been falsely accused, those who have been acquitted, or those about whom there is only suspicion (Kabat, 1998)<sup>12</sup>. It is impossible to determine the extent of the consequences of the publication. It is likely that there could be isolated instances where an individual named may be harassed or abused by others or that repercussions may be more serious and widespread. It is probable that cases of harassment, may not be reported for like victims of homophobic abuse, the named sex offenders may be reluctant to report (see Van de Ven et al., 1998).

While there has been greater frequency of negative reactions to the Index, it is often the case that such commentators are not quite sure what it is that they don't like about it (Walker, 1997). The publication has been called biased, based on vengeance and totally lacking mercy (Walker, 1997); while gentler critics have noted that it does nothing to promote discussion and development of sensible treatment and justice options (Faust, 1997). There also have been aberrant reactions to the Index including the suggestion that it may be used by child sex merchandisers to sell pornography, or as a contact list for paedophile networks (*Daily Telegraph* 6 March 1997). Positive responses to the Index are based on the views that sex offences often go unreported and therefore this whole crime category needs greater public exposure; that courts are prone to order name suppression and thereby maintain the hidden nature of the offences; that sex offences tend to be highly recidivist crimes and therefore repeat offenders' names should be made known; and that the victims will reap some benefits from the public naming of perpetrators (see Glaser, 1997). Such issues are addressed in the following sections.

### **Direct Consequences of Public and Private Notification Laws**

Notification laws will not necessarily protect the community from sex offenders generally, nor child sex offenders specifically. There are a number of well-

documented reasons for such a conclusion. These include that they: address the wrong forms of offending; may encourage displacement; are predicated on high levels of recidivism; provide a false sense of security; may exacerbate vigilante attacks; and lead to more cumbersome and costly justice processes. This section now deals with these more specific consequences of public and private notification actions.

The first problem is that Megan's laws are generally aimed at identifying non-related or stranger child sex offenders (Kabat, 1998). While the figures in both the US and Australia vary widely, the proportion of child sex offences committed by those known to the family could be as high as 90%, so these laws will only address about 10-20% of the intended offenders (Kabat, 1998; Kenny, 1997; Steinbock, 1995)<sup>13</sup>. Further the laws are based on having a convicted and released offender who must register with the police. Yet some studies show that most sex offenders, possibly up to 80%, have not been previously convicted and released, and therefore, again, the laws would not encompass them (Pincus, 1998). A final general point in terms of the scope of the laws is that they require that offenders cooperate with authorities by providing change of address. Compliance rates have been shown to be low (Steinbock, 1995). For example, in Los Angeles 90% of 3,200 addresses on a register were found to be inaccurate (Wyre, 1998); other registers were found to have inaccuracy rates of 90% and 80% respectively (see Hinds, 1997); while 75% failed to register in California (Presser and Gunnison, 1999). Such compliance and the need for accuracy are clearly even more of a problem for private notification actions.

One important study examined the likely preventive effect of notification laws in Massachusetts and found in a sample of 136 serious sex offenders that only 27% would have been registered prior to their current offence (Petrosino and Petrosino, 1999). More importantly, 67% of the 27% were most likely to commit offences against those known to them (based on their present conviction). The authors then analysed only the non-related or stranger cases, of which there were twelve, and found that in only four cases was there a strong prospect that the eventual victim would have been notified, and two cases where there was a moderate prospect. This study demonstrates the inefficacy of notification laws and the problems of defining what the 'community of concern' is (Braithwaite and Daly, 1994). The authors also point out that their findings are based only on the likelihood of notification – which is no guarantee of protection against victimisation. For once notified, a potential victim has to take some preventive measures and the offender has to respect those preventive measures.

This leads to the issue of displacement. While it has been demonstrated that displacement of offending will not occur all of the time for all offenders (Clarke, 1997), it is the serious predatory and perhaps clinically troubled offenders who are the intended subjects of notification laws and who are the ones most likely to have persistent offending patterns that are less amenable to changes in the opportunity structure. They are therefore more likely to be more determined to seek alternative venues, targets or activities. In the empirical work cited above (Petrosino and Petrosino, 1999), in two cases the offenders went outside their residential location, giving some support that displacement may occur in a number of instances. Further, as part of the probability of displacement, it is instructive to note that like many pieces of legislation, these notification laws are not uniform which could exacerbate

displacement from one jurisdiction to another (Kabat, 1998; Pincus, 1998; Presser and Gunnison, 1999).

What spurs notification actions is a view that sex offending is untreatable, that recidivism is high, and that any sex offender released back into the community is at high risk of re-offending. However our knowledge about re-offending rates is poor, probably less than one-third accurate (Steinbock, 1995). Indeed 'given the low base rate of sex offending behavior, the heterogeneity of sexual offenders, and the variety of contexts in which sex offences occur, it is difficult to see how either an actuarial or a clinical approach ... can provide a reliable means of assessing risk' (Grubin, 1999, p.1). As with many crime categories, there tends to be a small group of high-risk offenders who are likely to commit further crimes (Grubin, 1999). In Australia it is suggested that recidivism rates are between 15 and 43% (*Courier Mail* 11 May 1999). What is often not stated is that over half the offenders will never be charged or convicted with another sex offence, even with follow up periods in excess of ten years (Grubin, 1999). One meta-analysis of 42 studies (Furby et al., 1989) concludes that recidivism for sex offenders is between zero and 50%, with Canadian studies suggesting it is closer to 13%. Some research indicates that recidivism rates for sex offenders may indeed be lower than for other major crime types (Presser and Gunnison, 1999).

It is therefore suggested that notification sends a false message of security to the community; a message that they are safe because they know who the likely sexual predators are (Pincus, 1998). In the USA it is estimated that there are 250,000 sex offenders under corrections, with 60% released and in the community (Pincus, 1998). It is clear that every parent cannot be notified about all possible offenders living in their area. Moreover, notification sends a frustrating message to the community that the state is able to tell them about sex offenders within their midst but can provide no tools to deal with them (Pincus, 1998).

However, the most severe potential consequence of notification is the likelihood of physical harm or harassment to released offenders (Kabat, 1998; Walker, 1997). There are the high profile examples of harassment – possible murder, suicide, burning of houses, public rallies outside homes (Casey, 1998), and then there are the more insidious forms which are likely never to be reported (Pincus, 1998) where offenders find it hard to get jobs, accommodation, etc. This involves the paradoxical position that government authorities are proposing to maintain these registers while at the same time warning the community that vigilantism will not be tolerated (Casey, 1998). Arguments against the probability of vigilantism are that in Washington State over a six year period, there were 10,000 registered sex offenders, 940 who were notified to limited segments of the community, 320 who had broader notification instigated with 33 or 3% reported cases of harassment (Pincus, 1998).

Recent events in New South Wales however, surrounding the release of an accused paedophile and convicted murderer, John Lewthwaite, highlight the potential for harassment. Lewthwaite was reportedly held 'under siege' by residents in a Sydney suburb when they discovered that he was living with a counsellor in their neighbourhood. Fearful parents and neighbours 'screamed obscenities ... threw rocks and broken tiles, climbed on the window grilles, shaking the bars [and] ... blasted water from a garden hose through the letter box in the front door' (*The Australian* 23

June 1999). The effects of such a reaction to the release of an offender is crucial to the question not only of re-offending, but of the criminal justice system's ability to maintain its role in preserving law and order.

Many supporters of notification actions would find no problem with the harassment of convicted sex offenders, yet the notification laws can result in harm to 'innocent' individuals who are mistakenly thought to be a named child sex offender (Kabat, 1998) or can result in harm to the families of offenders. Wyre notes that vigilante attacks in the UK have been known to target the wrong person and there was one case where a child died in a fire as a result of publicity and subsequent actions against a paedophile (ABC, 1998). Indeed it has been recommended that those who engage in the 'outing' of sex offenders should be subject to charges as a criminal offence<sup>14</sup>.

A final direct consequence of notification is the cost to criminal justice agencies. An evaluation of notification laws in Wisconsin found that they dramatically increased the workload of probation and parole officers (Zevitz and Farkas, 2000). In particular, finding suitable housing is a key problem for staff. Several cases were cited of having located accommodation, but then a media onslaught and public rallies meant that alternatives had to be found (Zevitz and Farkas, 2000) and there are similar problems for employment and treatment. Others have acknowledged that large bureaucracies have been developed to deal with the workload that notification laws generate. They are seen as a drain on stretched criminal justice resources as special units are set up, police personnel spend time dealing with the paperwork and with community requests, and lawyers and courts deal with litigation (James, 1998; Petrosino and Petrosino, 1999).

In summary, the direct consequences of notification suggest that as a tool for protecting the public against sexual offending these laws are ineffective. Generally aimed at extra-familial and stranger attacks, the laws are not likely to incorporate the larger majority of cases which involve offenders who are related or known to the victim. In addition, notification often depends on the compliance of the offender to register and provide information on change of address, and rates of compliance have been shown to be low. The potential for the incitement of vigilante attacks and harassment, and consequent displacement of offending add to the questionable impact of such laws. Aside from these direct consequence the wider effects of notification suggest that the laws do little to enhance the goals of the criminal justice system.

### **Wider Implications of Public and Private Notification Laws**

The first broad area on which notification impacts is the treatment of sex offenders. Contrary to perceived wisdom that 'nothing works' in treatment and rehabilitation, there are now a number of international studies that would indicate the opposite (Furby et al., 1989; Hollin and Howells, 1994; Howells and Day, 1999), even conceding the disparities among sex offender types (Howells and Day, 1999). Programs tend to have more successful outcomes if they address 'criminogenic needs' identified as those features amenable to change and those that relate directly to offending behaviours (Howells and Day, 1999). Some claimed successes are with a moral education approach (see Garvey, 1998) where offenders listen to the words of victims and engage in role-playing. Certainly, long-term treatment is deemed better than short-term (Watkins, 1997), and treatment programs work best when they operate in the community rather than in institutional settings (Wilson, 1998).

However, we still lack rigorous evaluation studies in Australia (Howells and Day, 1999) that incorporate longer follow-up periods and ensure that there are control or comparable offender groups (Grant, 2000). On fiscal grounds, at least, it is estimated that there are cost savings of 6-7 times when comparing treatment with incarceration (Donato and Shanahan, 1999).

But sex offenders face great difficulties when they are returned to the community (Wilson, 1998) and notification processes are likely to work against their rehabilitation (*The Australian* 19 February 1997; Clausen, 1996; Kabat, 1998) for they intensify the isolation of released offenders and make them less motivated to comply with rehabilitation goals (Hinds, 1997; Nicholson, 1997). Paradoxically, once the laws were enacted in some jurisdictions in USA there was an increase in the numbers of sex offenders seeking treatment (Hinds, 1997). Yet this is balanced by the view that the 'threat of community notification may prevent convicted sex offenders from seeking or maintaining treatment' (Hinds, 1997, p.23; see Morrison et al., 1995, p.25).

Of course it is difficult to push for offender treatment options in the face of greater needs of victims. Part of the community reaction against sex offenders is rationalised on the grounds that victims need a fairer proportion of whatever resources might be available. However, it is important to defuse any such antagonism to demonstrate that 'helping victims and helping offenders are not mutually exclusive aims' (Grant, 2000, p.2). For in reality the laws do little for victims where it is imperative that 'victims of sex crime [also] need to be reintegrated into society' (Presser and Gunnison, 1999, p.6). Certainly notification processes do not involve victims, in a community justice sense, in the process. Indeed there is the likelihood of re-victimisation especially where the offender and victim are related<sup>15</sup>.

Another set of criticisms is that notifications interfere with criminal justice processes. They cut across our notion that a fair trial means that previous convictions are not known (*The Australian* 22 February 1997). Justice James Wood said the Index could be 'detrimental and indeed prejudicial to a fair trial' (*The Australian* 18 February 1997). There are likewise problems in publishing names because most jurisdictions allow for crimes with minor detention sentences to be expunged after a specified period (Hinds, 1997). Some jurisdictions (notably Kansas) have ruled that notification is 'cruel and unusual punishment' especially for offenders with little likelihood of re-offending; that access to registration information may not be proportionate to the offence committed; and that the length of the notification (in this case 10 years) may be disproportionate to the crime committed (NCJA, 1997).

Notions of a threatened public are underlined by the belief that crime and offenders are not adequately dealt with by the criminal justice system: that dangerous men and women are being allowed to roam the streets, looking for their next victim. Coddington clearly concerns herself with this last proposition, as she warns that 'they are out there, hunting your children, and they don't want to be stopped' (1997, p.19). Yet the truth is that we are not reluctant to incapacitate sex offenders where certainly the proportions have been increasing in the US (Hinds, 1997). As social commentator Hugh Mackay notes, there are flaws in the justice system but both public and private notification actions will not address these (*The Australian* 22 February 1997). He observes that the Index, for example, takes the view that no offence is too small to be

forgiven, that it promotes a nothing works kind of criminological view, and that it is likely to result in unfair trials.

Indexes such as Coddington's, fundamentally undermine a number of the principles behind contemporary notions of justice. The concept of notifying communities that a released offender is living in their neighbourhood is contradictory to the principle that once an individual has served time, or completed judicial requirements they have paid their debt to society. It typifies the idea Coddington puts forward that the deterrent to committing a crime should be that a conviction is a 'stain on the offender's reputation forever' (1997, p.7). A number of commentators have pointed out that notification fosters a form of double jeopardy, because those punished by the criminal justice system are further being punished through this public exposure (*The Australian* 18 February 1997; Pincus, 1998). The offender is kept under constant surveillance, for even after they have served their time they are subject to an additional punishment as notification has been described as 'mass preventive detention' (Pincus, 1998).

Notification processes breed severe problems of labelling and secondary deviance (Lemert, 1967) or of deviance amplification (Young, 1971); not to mention moral panic (Cohen, 1987) and scapegoating (Szasz, 1970). The Director of Public Prosecutions in New South Wales, Nicholas Cowdery is reported as saying that 'next they'll be asking them to wear an emblem on their coats' (*The Australian* 18 February 1997). Other commentators have drawn parallels with Nazi practices of marking certain groups with pink triangles and yellow stars (Kabat, 1998). The Index extends the negative effects of labelling and stigmatisation and self-fulfilling prophecies (*The Australian* 22 February 1997; Walker, 1997). It runs the risk of defeating the benefits of treatment programs for those offenders who have worked towards overcoming their propensity, and potentially could force sex offenders 'underground' (Walker, 1997).

The notification laws have at least pretended to be rooted in ideals of community justice, community management and community policing (Presser and Gunnison, 1999). The way that notification laws adhere to restorative or community justice principles has been analysed well by Presser and Gunnison (1999).

First with respect to offenders, notification laws are more likely than not to create a master deviant status, ie they are more stigmatising than reintegrative. The emphasis is more likely to be on labelling rather than treatment. The laws miss the point because they focus on stranger cases rather than offenders known to victims. They generate a false sense of security among community members for the laws are not really about community involvement or community building, with the criminal justice system still dominant in the process. Instead they are highly utilitarian and restricted to limited segments of the population. While they are designed to achieve peace and harmony, the opposite is likely to be the case; that they are divisive rather than cohesive. Finally, notification fails to address underlying social causes, structural inequalities, or the 'societal basis of the offender's conduct' (Presser and Gunnison, 1999, p.6). It is not an attempt to understand offenders – as is one of the goals of restorative justice – but rather to exile them. The laws tend to shame both the offence and the offender and result in the isolation of the offender; which may foster denial, retaliation, defiance and re-offending.

The concept of shame (Braithwaite, 1989) does have a role to play in contemporary criminal justice processes. It can be a useful adjunct to more formal mechanisms of

social control. However, there are many caveats under which shaming should be restricted. Based on the work done by Makkai and Braithwaite (1994) it is suggested that there are four main elements to reintegrative shaming (Harris and Burton, 1997:2): that a relationship of respect is maintained while the offence is disapproved of; that the ceremonies involve both a certifying and a decertifying of deviance; that the acts are labelled without likewise labelling the person; and that there is no formation of a deviant master status. But strong public condemnation only works well with certain groups of offenders (namely those who are middle-class, white and employed) (Sherman et al., 1992) and only works where it is followed by reintegration rather than degradation (Braithwaite, 1989; Garfinkel, 1956) under specific sets of conditions (Braithwaite and Mugford, 1994). Shaming 'does not require humiliation' and if done reintegratively then some offender groups are likely to have more respect for the police, for the criminal justice system and for the criminal law (Sherman and Strang, 1997a, p.1). Clearly, there are differences across and within offender groups, but early empirical results show that positive shaming works well for some, especially non-juvenile participants (Sherman and Strang, 1997a).

Again, with respect to naming and shaming, it has been pointed out that there is a 'community of concern' as opposed to a geographical community that has interests in the matters of the criminal event (Braithwaite and Daly, 1994). Most parties (victims, offenders and communities) to these 'communities of concern' tend to have reasonably high satisfaction levels with the reintegrative process, even though 25% of victims report feeling worse (Strang, 2000). There is also some hopeful results that recidivism is less likely under the reintegrative approach than through traditional criminal justice processing, although adequate studies have not yet been completed (Braithwaite, 1999).

Despite the strong grassroots calls for notification laws, public sentiment is on the side of restitution and not on retribution or vindictiveness (Umbreit, 1998). However studies that suggest this tend to focus on property offenders and the issues are more vexed when it comes to sex offenders. But there is growing demand for mediation for serious violent crime including sexual assault, although evaluations are not yet available (Umbreit, 1998). The Hollow Water situation from Lake Winnipeg in Canada serves as one successful example. There up to 80% of the community had been victims of abuse and up to 50% of the community had been perpetrators of abuse. Through a community-based program all but 5 of the 48 cases were able to be successfully dealt with which shows that reintegrative approaches can be more successful, even with serious cases of predatory sexual crimes (Nicholson, 1997).

The concept of 'shame' is now being widely adopted but regrettably its use is not always reintegrative or restorative, particularly in respect to sex offending. A more recent development in sex offender notification is the use of 'judicial shaming' or 'public exposure penalties' (Karp, 1998). Here convicted sex offenders have been sentenced to place signs outside their homes (Garvey, 1998, p.7) or to place newspaper advertisements warning other sex offenders that their photos and names would be published unless they sought help (Karp, 1998). This kind of judicial notification might work for some offenders by providing specific deterrence and might have some impact on crime rates via general deterrence because it restricts the offender, causes the offender an emotional cost and there may be repercussions in the

community (Garvey, 1998). Although generally the offender must be attached to his community in order to suffer shame from the publicity, (Garvey, 1998; Sherman and Strang, 1997b; Karp, 1998), some suggest that shaming can still impact on sex offenders in large anonymous cities, because sex will always invoke some kind of response (Whitman, 1998). However, despite the theorised impact on deterrence most see this judicial shaming as a form of 'lynch justice' where 'the chief evil in public humiliation sanctions is that they involve an ugly, and politically dangerous, complicity between the state and the crowd' (Whitman, 1998, p.2).

### **Conclusion**

While there has been a burgeoning of notification laws certainly in the USA and now much discussion in Australia, they are not without problems. There is a considerable amount of criminological or legal work exploring notification but much of it is in abstract terms rather than in presenting empirical inquiry. Naming and shaming are likely to have at least three serious consequences: the identification of the victim with the potential to revictimise him or her; a resulting punishment frenzy among a community; and distortion of any rational discussion in the sex offence and child abuse areas. While it is clear that notification offers plenty of shame there is no reintegration of the offender into the community. The offender is more likely to be subjected to harassment and ostracism. Indeed, notification laws offer nothing but more of the 'rough justice' that sex offenders seem to have been condemned to in recent years. It is the kind of 'rough justice' that is likely to nullify the rehabilitative effects of treatment programs, and is likely to escalate fear of crime and the incidence of false allegations. For notification, whether public or private, signals a state retreat from protection against sex offenders and thereby provides the community with only one option; to engage in further examples of the 'rough justice' given at the beginning of this article. There is scope however to be optimistic that a restorative justice approach and shaming has much potential if used for sex offenders. If notification laws are firmly encouched in restorative justice principles, including shame and reintegration, then there may be a reduction in the level of re-offending and a greater sense of fairness and justice for the community.



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**Table 1: Characteristics of offenders, offences and victims in the Index.**

<b>Characteristics</b>	<b>%</b>
<b>Offender Age</b>	
30 and under	30.9
31-60	55.5
61 and over	9.4
<b>Offender by State</b>	
Victoria	27.7
New South Wales	19.2
Queensland	17.8
Western Australia	14.5
South Australia	8.5
Tasmania	7.1
Australian Capital Territory/Northern Territory	5.3
<b>Offence Types</b>	
Rape, penetration, intercourse (includes attempted and intent to)	56.3
Indecent assault/dealings/acts (includes aggravated forms)	35.1
Other (pornography, exposure, phone calls, mutilation, incest, etc)	5.7
<b>Sentence Type</b>	
Gaol	81.4
Probation/fine/community sentence	15.4
Not sentenced (includes unknown)	3.2
<b>Victim Gender</b>	
Female	59.1
Male	28.9
Both	4.6
<b>Victim Age</b>	
10 and under	18.9
11-16	26.8
17-20	7.5
21 and over	10.8
<b>Offender-Victim Relationship</b>	
Stranger	34.0
Formal (teacher, church, coach, etc.)	21.7
Friend (of victim or family)	15.8
Family/Partner	1.3

**Notes**

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<sup>1</sup> The Index is deliberately labelled here as ‘Deborah’s Law’ because it parallels the aims of public notification laws in the USA where ‘Megan’s Laws’ have now been introduced in almost all US States.

<sup>2</sup> ‘Megan’s law’ has since become the nomenclature for community notification laws and currently forty-five States have enacted legislation of this kind (Kabat, 1998; Pincus, 1998).

<sup>3</sup> Currently fifty States in the USA ‘have sex offender registry laws requiring every convicted sex offender to register their presence in the community with local law enforcement’ (Pincus, 1998, p.3).

<sup>4</sup> Paradoxically, the Attorney General in Queensland presently has the power to provide limited disclosure of an offender’s address to individuals with a ‘legitimate and significant interest’ under a little-known section of the Criminal Law Amendment Act (*Courier Mail* 11 May 1999).

<sup>5</sup> Two cases, again from Queensland, illustrate this recent interest in invoking community notification laws in Australia and demonstrate the parallel with the USA. In April 1996, Raymond Garland, an offender with a long history of sexual offending against children, raped a 14-year-old girl he had met and started dating while on parole. Garland then fled, and subsequently raped three of 14 hostages held in a 12-hour siege. Media reports suggested that a priest who advocated Garland’s parole and who helped enrol him in school, should be removed or reprimanded. The priest was severely criticised for not informing the public of Garland’s offending history (*Courier Mail* 30 April 1998; *Courier Mail* 6 November 1998). A second case involved the abuse and torture of a young boy at the hands of his mother and her de-facto, which prompted media debate on public rights to access information about offenders. Discussion centred on the rights of the public against the right to privacy of the victim (*Courier Mail* 23 November 1998).

<sup>6</sup> There are organisational databases and notification practices that involve churches, sporting or other recreational groups (like the boy scouts) who deal with children as their clients and who have had to deal with sexual offences occurring within their purview (Kabat, 1998). These organisational databases are usually highly restricted, they often contain names of individuals never charged, and indeed some suggest they offer protection for sex offenders (Kabat, 1998). This article will not deal with this form of private domain notification.

<sup>7</sup> There were two individuals who are not listed in the text but whose photographs appear. Both these men were deceased at the time the Index went to press; one died of cancer in 1991 and the other committed suicide in 1994. Given the ‘protectionist’ stance of the Index, it is not clear why these cases were included.

<sup>8</sup> This was in particular reference to the De Troux case in Belgium, where Coddington (1997, p.26) notes that ‘our newspapers are full of photographs, names and grieving parents when it’s the other side of the world, but when it happens next door, we turn away and don’t want to know’.

<sup>9</sup> Of the 650 individual entries, 17 cases are unnamed; there are many instances where multiple offenders in a single case are listed under their own names (as for the Anita Cobby case); while in other cases multiple offenders are listed under a single entry.

<sup>10</sup> New South Wales cases are probably under-represented as the courts in that State were ‘uncooperative’ (Coddington, 1997).

<sup>11</sup> A major thrust of our analysis was to focus on whether the Index was representative as this relates to the kinds of offenders targeted by public notification laws. Clearly the Index is not representative as it relied in the first instance on newspaper reports; but we were hoping to demonstrate this in a more empirical way. However, trying to find reliable, comprehensive and comparable data on sex offending in Australia is not an easy task. It needs to be stressed again that sex offending is a heterogeneous crime category that covers such a wide range of behaviours (Gebhard et al., 1965) and much of the literature focuses on child sex offending in Australia.

<sup>12</sup> The New Zealand version was withdrawn from sale because of a damages claim by someone named in that Index whose conviction was subsequently overturned (*The Dominion* 19 August 1997).

<sup>13</sup> Similarly, the Australian Bureau of Statistics Women’s Safety survey shows that 24.5% of physical and sexual violence was perpetrated by a stranger (ABS, 1996, p.19).

<sup>14</sup> In Queensland, the Victims of Crime Association and the Civil Liberties Council jointly made such a submission to the Attorney General earlier this year (*Courier Mail* 28 February 2000).

<sup>15</sup> The potential for re-victimisation is recognised in new laws soon to be introduced in Queensland that ban the publication of the names and photographs of children who have been abused. Fines for media organisations will be up to \$75,000 or two years gaol (*Courier Mail* 2 February 2000). This Child Protection Bill acknowledges the potential harm from media and other exposure especially where victims abused by family members have details about their families published and therefore their own privacy invaded.