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# Sex offenders, sexuality, and social control: A case study in the social construction of a social problem

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Sex Offenders, Sexuality, and Social Control:  
A Case Study in the Social Construction of a Social Problem

by

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Thesis

Submitted to the Department of Sociology, Anthropology, and Criminology

Eastern Michigan University

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Ypsilanti, Michigan

For my mother,

Thank you for all the hard work you've done to help me get to where I am today.

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## **ABSTRACT**

Legislation regarding sex offenses is often passed swiftly with little to no evaluation of the effectiveness of such policies on preventing recidivism and protecting the public. Further, little criticism is raised despite overwhelming evidence that sex offender registration and community notification is ineffective and has many negative consequences. The societal reaction is created through moral panics resulting in views that are not always reflective of the nature of the problem. In effect, the policies put into place in the name of declaring war on the deviant behavior reflect these views and do not target the specific problem.

While the first two panics involved the identification of sexual offenses, offenders, and the causes of such deviance, the failure of these two time periods to eradicate the problem of sexual offending has caused an evolution in the third sex crime panic from focusing on the nature of sexual offending to a drive to control and contain the population of sexual offenders. Because U.S. society still has little understanding of the nature and cause of sexual offending, laws continue to be ineffective in the third panic and exacerbate the original problem.

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## CHAPTER 1: SEXUAL OFFENDERS AND MORAL PANICS

While sexual offenders are generally viewed as habitual offenders and sexual offense victimization is a rather ominous problem in our society, the “social construction” of both are problematic in that the nature of the problem and the potential threat are disguised by an overexaggeration and distorted view of the deviant acts. Those who are victimized face years of shame and humiliation as well as a constant struggle to leave their victimization behind them. It is not surprising then that society has spent the last twenty years creating and amending legislation to control sexual offenders and prevent the victimization of members in society. While on the surface the control and enforcement mandated through the pioneering Federal level sexual offender laws (the Jacob Wetterling Act, Megan’s Law, and the Pam Lyncher Act) appear important, necessary, and a benefit to have in place for the majority public, in reality laws with regards to sex offending are passed swiftly and absolutely without any forethought to their effectiveness. A review of the academic literature reveals that these laws are ineffective at protecting the public or preventing recidivism and have instead produced many unintended consequences that exacerbate the problem. The questions raised then are first, “Why are these laws passed and why do they continue to be passed in a more severe direction in light of their ineffectiveness?” and secondly, “Why isn’t there more criticism of their ineffectiveness?” It becomes apparent when including the history of sexuality, the drawing of boundaries between deviant and non-deviant sexual behavior, and the failure of the first two sex crime panics in the United States that society has started a war not to solve the problem of sexual deviance but rather to attempt to contain and control the population deemed sexual offenders. In that society still has relatively

little knowledge and understanding as to the nature and cause of sexual offending, the laws seeking to control the population of offenders will continue to be ineffective.

Before turning to the creation of deviant sexuality, the sex crime panics, and societal response to this type of offending, it is important to first define the population of offenders these laws are seeking to control. The definition of a sexual offender has constantly changed over time, and those this country deemed sexual perpetrators in the 1930s and 1940s may not be included in the enforcement of sexual offenders today (Jenkins, 1998). It is likely that this definition will continue to change as it has in the past and those controlled by sexual offender laws forty years from now will constitute a different population than those prosecuted today as sexual deviance depends on the constantly changing boundaries of sexual deviance and non-deviance. For the purposes of this thesis, I use the current definition of sexual offenders that includes some offenders who have always been and seemingly will always be included in the laws controlling these types of offenses, as well as some offenders who may not always be under this type of control. Ranging from child molestation, incest, rape, and sexual assault to voyeurism, exhibitionism, and harassment, all sexual perpetrators are included in the aforementioned laws (Levenson and Cotter, 2005a). In the basic form, a sexual offender is an offender who violates the law in a sexually motivated way in that his or her behavior involves some sort of indecent exposure, contact with, or violation of areas determined private such as the genitalia that can include viewing without consent, showing without consent, or handling without consent. As this definition may be outdated in the near future or will fail to include some sort of act or perpetration added to those enforced under the law, the act of defining the offender gives a glimpse into the reason sexual offender laws are

ineffective at controlling the population. Part of the problem of ineffectiveness is that the laws do not take into account the instable definition of offenders to be controlled nor do the concerned population realize the instability and ever-changing concept that encompasses the population they fear. Why is there such a lack of understanding?

The answer lies in the apparent social plague of moral panics. Moral panics are fueled by fear and anxiety over a perceived threat to safety that is explained through the use of dominant ideology. This ideology is biased toward the interests of the elite and serves the function of protecting their economic, political, and power positions. In that all knowledge is socially constructed, the threat that has created a moral panic is often exaggerated, leading those in society to believe that there is a real danger lurking in every corner. The result is overwhelming support for the passing of legislation based on the inaccurate view of the prevalence and nature of the deviant act warranting attention. Therefore knowledge of sexual offenders, the actual threat, and the resulting legislation is based not on an accurate representation of the problem but rather on a distorted view that benefits the upper echelons in society in re-establishing hierarchy and order and, ultimately, harms rather than “assists” sexual offenders, has little or no impact on most people, and provides society at large with a false sense of security and protection from a threat not properly explained. Hence, laws are ineffective but remain in society as individuals who support the criminal justice system’s application of social control have little understanding of what they are controlling.

It becomes important then to evaluate how the dominant ideology with regards to sexuality and sexual deviance has evolved throughout the history of the United States in order to determine why present day society has been overly focused on and enthralled

with the control of sexual offending and offenders. The changing social fabric with regards to individual interactions and political and economic structure has shaped the boundaries of sexual rights and wrongs and shows how the creation of what is determined appropriate sexual conduct and deviant sexual conduct has always been rooted in deeper institutional issues of family, race, gender, politics, and economic prosperity rather than actual harmful versus benign behavior. In the rest of this introduction, before moving into the historical analysis of sexuality, I first identify what moral panics are; second, provide a theoretical orientation for making sense out of moral panics, and third, underscore the “raison d’etre” of moral panics.

### Moral Panics

A moral panic involves many characteristics within the definition. In its basic form, a moral panic can be described as a block of time where a society is gripped with fear over a specific type of deviance by a specific type of offender. An extensive amount of time and energy is devoted to explaining the actions of the actors, and many people develop a vested interest in following the deviance, promoting awareness, and urging for a change. The term *moral panic* was first and most popularly coined by Stanley Cohen and Jock Young in the mid to late 1960s. Since then many social scientists have devoted their research to explaining how panics arise and the various intended and unintended consequences of a society succumbing to the crisis a moral panic suggests.

Stanley Cohen (2005) shows that moral panics envelope the following characteristics:

There is a concern that there is a threat or that there is a potential threat to the general public; that general population develops hostility or “moral

outrage” toward those individuals and institutions that encompass the problem; a majority of the public agrees that this specific problem exists and that the society has a vested interest in doing something about it; further, there is disproportionality, or an exaggeration of the problem, number of occurrences of the deviant acts and the resulting damage, extent of moral or norm violation, and the risk if no action is taken against the deviance. Lastly, moral panics are almost always volatile meaning that they are created suddenly, panic immediately follows and then the panic disappears without warning or apparent reason (xxii).

It is important to note that the characteristic of disproportionality means that the societal reaction is overly dramatic and grossly exaggerated when compared to the actual problem and is responsible for many of the unintended consequences of moral panics. However, “Calling something a moral panic does not imply that this something does not exist or happened at all and that the reaction is based on fantasy, hysteria, delusion and illusion or being duped by the powerful” (viii). Actions that provoke a panic within a society are often times harmful to the population; however, a panic often exacerbates the original problem into a more serious problem than it realistically is, with harsher penalties than are generally needed, and encompassing a larger population of people than are representative of the real threat posed.

Panics arise following what is generally referred to as an “explosive situation.” Almost always an actual event, it can quickly verify the belief in a morally offensive problem in the form of a crime and a type of behavior that is threatening to the social fabric of society and the well-being of the population. Further, the particular actor, sexual

offender, or any other deviant taking center stage in a panic is quickly associated as engaging in a random, pointless crime and will not stop unless appropriately controlled. This problem may have been unrecognizable in the past because it was deceptively ordinary and routine, but the action is now believed to have approached if not crossed the line of moral offensiveness and thus landed in the societal spotlight. Other times, the problem has occurred throughout history but has been, up until the explosive situation, a seemingly distorted type of the more traditional appearances of deviant behavior. Finally, boundaries of deviant and non-deviant behavior may have shifted and the behavior in the spotlight is now a deviant act. Further, these problems are transparent as well as opaque: transparent in that anyone is able to recognize the actions but also opaque in that the experts on the topic need to explain the consequences and risks associated with what has previously appeared to be harmless.

In his article titled *The History and Meaning of the Concept*, Kenneth Thompson (1998) extends the types of moral panics by exploring the different motivations behind the creation of moral panics. He explains that Erich Goode and Nachman Ben-Yahuda in *Moral Panic* (1994) have uncovered three different motives behind panics by three different groups: "... 'middle level' outsider interest groups (social movements) model... a grassroots model and an elite-engineered model" (61). The social movement type of panic describes those types of panics that attack more broad social problems involving a specific classification of individuals, such as women or minorities, and is motivated by a sense of inequality. The grassroots model describes the upsurge of a moral panic as caused by the generalized concern and anxiety about the threat of the deviant action. The elite-engineered model is based on the notion of maintaining status; the panic arises in

order to repress a certain segment of the population through the control of certain types of perceived crimes that serves to maintain the elite's privileged position. There are two types of elite-engineered models of motivation. One is the elite model where the main concern is with maintaining status and the other is the class model that is concerned with adhering to the current structure of class inequality. It is argued that the middle level model occurs most frequently and is the most favorable of the three, both of which could be true. The grassroots and social movement motivations, while having a few examples of addressing the inequalities of the lower classes and minority discrimination, are most often cleverly disguised motivations of the elite and the inequalities felt by the upper echelons of society.

#### Theoretical Orientation

Throughout the introduction and the corresponding outline of moral panics, it is shown that human beings are active players in constructing the social world around them. Through interaction with others around them and their social environment as a whole, people are responsible for developing the knowledge that indicates deviance and non-deviance and, hence, what processes are developed to control and protect from that which is deemed deviance. In the following section, a theoretical orientation is outlined involving those theories integral to what is called "Crime and Social Process" or CSP (Barak, 1998). Einstadter and Henry (1995) refer to these theories as "interpretive social process theories" that "attempt to explain the meaning of crime and deviance as people learn information, acquire values, and participate in behavioral patterns with others" (Barak, 1998:155).

Labeling theorists (Becker, 1963a; Goffman, 1963; Kitsuse, 1962; Lemert, 1967; Schur, 1973) drawing upon the ideas of George Herbert Mead (1934) and Frank Tannenbaum (1938) developed a theory that was popularized in the 1960s because it deviated from traditional theories explaining crime and criminal behavior. These theorists were more concerned with the way certain acts became criminal behaviors in society. Further, labeling theory, also called social reaction theory, symbolic interactionism, or phenomenology, was concerned with the effects of deeming someone a criminal or deviant and their potential for future deviance. In essence, “The key principle of the interactionist/labeling perspective is that people can adopt deviant or criminal identities as a result of cumulative negative social reaction in the course of official institutional processing by social control agencies” (Einstadter and Henry, 1995:201). In other words, people develop a sort of “looking glass self” in that they will construct a personal identity based on what they have been labeled by society (Blumer, 1969).

While this works both ways, labeling theorists were most concerned with the acquiring of negative statuses deeming individuals delinquent or criminal and the official processing of such a label developing into a stigma or, as Goffman (1963a) indicates, a “spoiled identity” or “master status.” The problem with acquiring this identity is outlined by Edwin Lemert’s (1967) primary and secondary deviance where primary deviance is basically an initial breaking of the rules in which the actors do not identify themselves as inherently deviant or criminal. Secondary deviance then occurs when an official label or stigma is attached to the actors and the subsequent acts that follow as a result of that label. The actors have come to accept their master status or position in society as that of criminals or delinquents and as Braithwaite (1979) argues in his theory and analysis of

crime, shame, and reintegration, “The degree or kind of negative label used is important in ‘tipping’ one away from or toward crime” (Barak, 1998:158). In other words, the reaction of society towards actions and actors in a way that negatively labels individuals can be as responsible for the secondary deviance that occurs as an individual actors’ cognitive processing and behavioral deficiencies. Further, as Cohen (1966) argues, negative labeling can completely restructure self-perceptions so that these individuals feel that they are expected to behave deviantly or are viewed as and should come to accept their inherent inability to be a part of the society that surrounds them.

The process of developing deviance creates a cyclic effect where individuals become labeled deviant and so internalize this label as their master status, producing their secondary deviation. While primary deviation is not important, secondary deviance is not the central concern but rather the result of the connection between action and reaction. This is not to indicate that all processes of labeling are uniform in their application; quite the contrary. Contexts, situations, and the severity of the consequences all come into play in determining the intensity of the reaction. Further, some who have not broken the roles and categories of deviant behavior are labeled deviant. History shows that what constitutes deviant behavior and the focus on certain actions will vary and change over time, many times as a result of some apparently unrelated societal phenomenon. Human beings rely on labeling. It is important to establish someone’s social identity from the minute one encounters the individual in order to gauge whether the individual poses a threat, and if so, the severity of that threat to one’s well-being. Without the mechanism of social categorization, socialization and interaction would rarely occur. Labeling is an important part of our socialization and ability to create organization and order.

While reactions vary, there are certain characteristics within the process of labeling that are similar. First off, all those who are labeled *deviant* become outsiders. Once labeled, they are deemed an abnormal part of the population and not fit to be a part of society. They lose their public identity and take on the new status of offender and deviant, a “threatening” individual. Secondly, when a moral panic arises, the reaction to the deviance society is panicking about becomes very patternistic and holistically similar. Contexts, situations, and the severity of the consequences are discarded and a uniform application encompasses a wide range of actions. As the uniformity in reaction becomes widespread, it reinforces the idea of an objective line separating right from wrong behavior and the need to determine the exact location of the boundaries of good and evil.

Boundaries of deviant and non-deviant behavior constantly change in a non-directional pattern, indicating that all deviance is created by society. Labeling theorists were concerned with studying the reactions to actions but did not expand the explanations to fully examine why those reactions occurred. Conflict theory fills in the apparent gaps. The criticism of labeling theory among conflict theorists was the disregard to show the motivation of hierarchy and class structure in determining the difference between deviant and non-deviant, deviance and non-deviance. The first step in studying deviance has to be the origin of the reaction to the action that creates the label, and it becomes apparent that a prime component of the construction is the separation of deviant and non-deviant that parallels upper and lower class boundaries. Thus, “the ruling class tends to dominate a society’s intellectual and ideological life, its notions of true and false, of good and bad” (Goode, 1975:102).

Heavily influenced by Marxian thought, conflict theory examines the economic incentive of keeping inequality between individuals and groups within a society. In order to have an appropriately functioning capitalist society, there must be a large segment of the population that acts as the labor force. It is also necessary that this massive segment of the population is controllable by those in the upper echelons in order to increase productions and profits and to minimize the spreading of wealth. This control involves domination that is achieved by enforcing the behavior of the lower classes. The views of the elites become legitimized through association with the church, family, media, schools, and the state itself, those institutions within a society that the majority trusts. “Problem populations tend to share a number of social characteristics, but most important among these is the fact that their behavior, personal qualities, and/or position threaten the *social relations of production* in capitalist societies” (Spitzer, 1975:108). A hierarchy is created where deviant acts are rarely policed among those who dominate but almost always enforced in the lower classes.

Under Quinney’s Conflict Theory of Crime, “Defining and enforcing crime becomes a means of reproducing the power and socioeconomic inequalities between these groups as the dominant class has interests that conflict with their subordinates” (1975:37). There are several steps toward creating a majority consensus of views held by a small minority of individuals that are necessary to properly control the masses. Beyond simply labeling deviant behavior, the dominant class defines that which constitutes a crime by creating legal definitions through the employment of political agencies organized by the dominant class. The formulation of those acts that fall under the definition of such crimes are those that obviously conflict with the interests of the

dominant class and are applied through the enforcing agencies that are put in place by the dominant class to administer the written laws. These agencies do not reflect the true nature of the inequality of control but rather the need for an organized and orderly society to protect and serve the interests of upstanding citizens. The result is the construction of ideology and social reality that becomes institutionalized and formally accepted within a given society.

The criticisms of conflict theory to labeling theory served to show the vast consistencies and overlapping themes of both. Thus, the integration of the two into a single theory, social constructionism, seeks to expand on the ideas presented by the two individually and collectively. Under an integrative model, groups are labeled deviant because of conflict between the classes, and societal reaction to the crime is a result of how much it conflicts with the interests of the dominant class. Merging the two original theories expands on labeling theory to explain the root of reaction and resolves the opposition in that it did not account for the dominance over ideology held by the elite members of society. While conflict theorists were correct in arguing that the absence of elite ideology made labeling theory incomplete, conflict theory is incomplete if the concept of labeling deviant behavior is not included, and further that motivations of dominance and elite ideology are not always economically based (Best, 2003).

Social Constructionism derives from the works of Schutz (1932, 1964), Garfinkel (1956, 1967), Berger and Luckmann (1967), Cicourel (1968), Quinney (1970), Douglas (1972), and Pfuhl (1980) and explains that behavior is ultimately the outcome of interactive relationships but also that the labeling of that behavior is a construction of these interactions. Further, constructionists were primarily concerned with the

construction of social arrangements and relationships where the processes of interpretation, identification, and labeling end up occurring. “Just as human behavior is not fixed in its meaning but subject to interpretation, negotiation, and reformulation, the same may be said of social organization. Hence, crime and criminals come to be viewed as socially and historically constructed phenomena” (Barak, 1998:158-159).

Social constructionism was first coined by Peter Berger and Thomas Luckmann (1965) in *The Social Construction of Reality*. The text examines the sociology of knowledge that is the basis for showing that all knowledge is subjective, and social life shapes all the knowledge individuals accumulate over the life span. The study into social construction and the sociology of knowledge concerns itself with the examination into the foundation of knowledge and how individuals come to objective views based on subjective constructions. Using a Marxian base, ideology is the central formulation of knowledge within a society and is used as a weapon, a way to serve the social interests of the elite. Karl Mannheim further expanded this thought by showing that no human thought resides in a vacuum immune to the ideology of its environment. While ideology is present in the environment, individuals create it and so while these dominating views shape humans, humans also affect and change these ideologies and foundations of knowledge through their interaction with the environment. Thus, there is no such thing as objectively produced knowledge or truths.

This interaction and the birth of such knowledge in society is rarely examined but instead is accepted as absolute. Individuals rarely question the information they accumulate unless an inconsistency arises. Even so, most often the inconsistencies are overlooked or ignored. People tend to lead a pragmatic existence and do not concern

themselves with information that appears irrelevant to either the dominating views or that which constitutes the means to the ends they are looking at achieving. Most effort is directed toward finding patterns of behavior that confirm the knowledge base already held by the majority and that which is institutionalized to help make sense of the world and maintain order. This institutionalized knowledge serves two functions; to keep others out but also to keep many in. The organization of knowledge must become legitimized to show that it is the right way to live and is often achieved through the use of laws and written codes. As a result, knowledge takes on the appearance of objectivity and absolute truth.

At the individual level, the roles that are issued in a society become “non-human facticities” or, in other words, pieces of knowledge viewed as independent of human will and, in essence, unchangeable. Even though most individuals view themselves as diversely encompassing many roles, the external “objective” role they are issued based on the reactions of others becomes their master status. The institutionalization of the specific actions typical to that role reinforces the need to adhere to the issued status, and the push for order creates the insistence on staying consistent with the typification of the role. To fail to follow what is assigned is to fail society, even if those labels harm society or fail individuals.

The confirmation bias individuals use to rid themselves of inconsistencies that arise is only half of the contribution to the foundation of knowledge and one side of the interaction, the internal side. In maintaining consistency and patterns of the roles assigned, individuals externally reinforce the categorization of others within society by the meaning of roles and deviant behavior portrayed through dominant ideology. Thus,

the secondary actions and deviation of each assigned role organizes and maintains order of the foundation of knowledge and the individual shapes the environment and social sphere around them.

Richard Quinney's *The Social Reality of Crime* elaborates on a macro level the effects of social construction on society's breadth of knowledge in that he shows that the reality of crime is built out of conflict within society and that "crime is affected by the same dynamics that shape society's social, economic, and political structures" (Quinney, 1970, 1975, Barak, 1998:159). The theory is based on five propositions:

1. Crime as a legal definition of human conduct is created by agents of the dominant class in a politically organized society.
2. Definitions of crime are composed of behaviors that conflict with the interests of the dominant class.
3. Definitions of crime are applied by the class that has the power to share the enforcement and administration of criminal law.
4. Behavior patterns are structured in relation to definitions of crime; within this context, people engage in actions that have relative probabilities of being defined as criminals.
5. An ideology of crime is constructed and diffused by the dominant class to secure hegemony.

Quinney is arguing then that the formulation of crime depends on the labeling of criminal and non-criminal acts as well as the application onto individuals, the resulting behavior individuals adhere to because of the label, and the dominant class construction of ideology.

The author contends that social constructionism creates an important base to allow the social sciences to examine all contributing factors to the creation of deviance and the interaction of individuals in society. Post-modernistically speaking and in the spirit of integration, the ability to fully comprehend deviance at all levels involves the inclusion of all disciplines explaining all components of a society in which the behavior

in question was created. More broadly historical, economic, political, geographical and sociological thoughts must be included as well as individual levels of explanation in the fields of psychology and biology. It is through the unbiased inclusion of all disciplines that the explanations surrounding deviant behavior can be properly dissected and explained, as all these fields encompass components of society that interact with individuals and are shaped by individual interaction.

### **Why Are Moral Panics Created?**

Two questions central to the social constructionist theoretical evaluation of moral panics are first, why some problems that are significant and morally as well as physically harmful are ignored, and second, why actions generate a moral panic in one country but not in another. Panics are not universal or even structured the same way from one problem to the next, in one country as opposed to another, so how are the inconsistencies explained? It is generally believed that certain actions are chosen because they either offend moral principles that are basic to a specific society or that they enable individuals to indirectly criticize or dominate certain groups or institutions. Further, these “deviant” acts may provide opportunities to tackle, or at least begin to discuss, certain issues that seem too large to face directly or in their totality. For the latter, this may create an avenue where individuals and societies can ignore the big problems plaguing the system they live under but also temporarily feel at ease that there is some sort of action being pursued in a particular direction (Glassner, 1999). For the former, a moral panic can cloud sensible judgment and the capacity to understand the significance of the action or reaction and thus enable domineering groups to pursue specific agendas.

As mentioned before, the onset of a panic almost always involves an explosive situation, often two or three cases of the same action (but can also involve a single event), which creates a consensus of hostility and outrage. Key players must come into play for a panic to peak and last. Although media coverage offers the first glimpse into the action that those within a society will begin to feel and are integral in creating feelings of anxiety and fear, the media alone will not continue to cover the story unless there are those who push for them to do so. Ownership of the problem is necessary. Most often these individuals or groups are called “moral entrepreneurs” but are also referred to as moral crusaders, activists, and rule creators. They are able to gain support either because they represent the elite classes or are able to involve those who are elites; they are closely tied with media and/or politicians; they are surviving victims, or parents and relatives of those who were victimized. “Institutionalization depends on amassing sufficient social support for claims about new problems” (Best, 1999:63), and through the media, experts, political figures, and exaggeration of the severity of the problem, moral entrepreneurs are able to gain majority support for new legislation to control the actions and actors.

## CHAPTER II:

### ON THE SOCIAL CONSTRUCTION OF MORAL PANICS

The next few sections will break down each of the key players, commonly referred to as the “iron quadrangle” (media, activists, government, and experts) (Best, 1999:63). These four are integral in creating public awareness and inciting panic. It is also imperative that this discussion follows with an examination into the other groups involved; offenders, victims, and the concerned public. However, before turning to these key players, it is important to first understand how the “iron quadrangle” exaggerate problems and provoke fear from the concerned public. In order to understand this phenomenon of exaggeration, it is necessary to explore one of the most powerful tools used by the iron quadrangle in gaining support: statistics.

In every panic, key players on all levels will rely on the use of descriptive statistics, percentages, averages, and rates to explain and stress the severity of the potential risk a social problem poses. Historically, statistics were called “political arithmetic” and “can become weapons in political struggles over social problems and social policy” (Best, 2001:13). The strategy among the iron quadrangle to gain widespread support over the cause is to provide a horrific example (an explosive situation) and couple that with dramatic statistics and general statements of crime being on the rise. While it is impossible to accurately measure crimes, deviance, victimization and violations, data collection instruments such as the Uniform Crime Report (UCR) and the National Crime Victimization Survey (NCVS) can help to more adequately reflect the nature of a problem. However, new social problems are rarely statistically documented until after a panic ensues and those who are pushing for immediate action against a certain behavior will rely on the use of recently materialized statistics or “guesstimates.” These figures are more often speculations than adequately measured statistics and are

reworded or reconfigured to more accurately reflect the view of those who are using them. The more dramatic statistics are, the more often they will be repeated and used. After such guesstimates are repeatedly used in media outlets, the fact that they weren't reliable disappears and the numbers become indisputable truths. The spread of bad statistics can be attributed to an innumerate society and a pragmatic existence of those who use the statistics.

### **Mass Communication and News Media**

Mass communication and news media are influential and integral to the creation of "social problems." Accordingly, activists rely on the use of mass communication and news media to legitimate the existence of a problem and gain widespread support. Gregg Barak (1996) has noted that "the culturally mediated visions of crime projected by the mass media, or the selections and presentations by the news media on criminal justice, are viewed as the principal representations by which the average person comes to know or make sense out of crime and justice..." (107). Moreover, since most people receive information on "social problems" through the media, citizens similarly hold attitudes and opinions that reflect how the media portray these problems.

The mass news media is crucial in creating the agenda for a new social problem in that it selects the stories that receive air time, become the day's top stories, and develop (or not) "legs" or follow-up stories. The mass media transfer the images to the public and, in effect, encourage discussion on the emergence or development of a problem (Cohen, 2005). The reports of these new types of social problems will describe their nature and may offer an overly simplistic "explanation" for why they are occurring. Further, many editorials, op-ed pieces, pundits, etc. will interpret the meaning of the action. Most often,

if the belief about the seriousness of the crime becomes compelling and widespread, then coverage will continue for a period of time, hence, becoming a moral panic. Usually the stories are selected because they are able to convey a dramatic example: a helpless, innocent victim exploited by a powerful degenerate as well as the rare sensational crime that shocks society. Most examples are well known, such as the kidnappings and murders of Dru Sjodin, Megan Kanka, and Polly Klaas who were all abducted and brutally murdered by strangers, acts that were not foreseen and shocked citizens. However, it is also required that the story have positive endings of support groups, authority figures or the appropriate institutions such as local government officials, community members, and police officers who will intervene against this group of perpetrators. In all of the aforementioned examples, foundations have been set up in memorandum and to collect support from individuals across the nation. Further, locally and nationally, government officials have set up legislation in honor of these victims, most recently Dru Sjodin in the Adam Walsh Act of 2006, to help police officers and community members protect themselves and their children from the same violence occurring to them. Last, the offender must be the one to blame in order to reduce opposition and tell the story with few political overtones. The reporting of social problems is ideal, then, because the blame is placed on the undesirable offender while institutions receive credit for their upstanding responses to community safety. However, this can lead to a lack of objective reporting in that any failures on the part of institutions are absent, and few, if any, are willing to openly criticize the subjective nature of the report (Best, 1999).

There are three misrepresentations occurring at the same time with regard to the mass media: one, an exaggeration and distortion of the social problem; two, inadequate

and false predictions of future incidents derived from mutated statistics and guesstimates; and three, an interest of the elite groups, such as media conglomerates looking for ratings and politicians who have attached onto promoting change in legislation as well as enforcing social agents of control such as police officers generally having their ideological proclivities taking precedent over the interests of the offenders, society at large, and victims, past and future. While newspapers, televised reports, and infotainment do not necessarily lack the objective reporting necessary to portray the reality of a social problem, these outlets of information generally ignore, dismiss, or downplay the empirical realities and/or contexts of the problem being reported for the sake of grabbing the attention of the public and increasing ratings.

Knopf (1970) explains the “shotgun approach” as the typical way the media grabs the general public’s attention where stories are run by an elaborate front-page assertion coupled with flashy pictures and misleading phrases. For example, titles are run with sizzle words such as “mass violence” even if the story is indicating that mass violence is not occurring. Further, many news organizations will report the same story multiple times with variations or updates, creating the appearance that there have been separate reported events. As people become more and more intrigued by violence-riddled stories, they find that more and more of these stories are reporting on violence occurring in their areas, surrounding areas, or areas that are similar to their own location. The more individuals see stories about violence occurring, the more likely they are to believe that violence is occurring all the time and can happen to them at any time or place. Psychologists often refer to this as the “availability heuristic,” that people will view how common or important something is by how readily it comes to mind (Glassner, 1999). A study by

George Gerbner (1992) found that the more individuals watched televised news, the more they felt that their neighborhoods were unsafe due to rising crime rates locally and nationally as well as overestimated their odds of becoming a victim in the future.

False predictions will further distort the stories' presentation of the problem and its magnitude, creating exaggerated fears that the problem will be worse in the future and unifying the view of the need to do something about it. Playing by the rules of confirmation bias, media figures seek out events, research, and statistics that will confirm their prophecies while playing down those things that seem to contradict the projection of increased deviance (Cohen, 2005). For example, stories run about school shootings are likely to report on the instances of violence occurring over the last several years, omitting statistics and facts showing the relative rarity of these events in the United States. The added news coverage as a result of increased news channels, exclusive 24 hour news channels, and the Internet have only made the problems of exaggeration, distortion, and prediction more acute. Panics regarding social problems in the latter part of the twentieth and into the twenty-first century are longer in duration than those in the past, at least in part due to the intensive media coverage on the event, after-event follow-ups, and rippling effects of the incident. The more often one hears about the problem, the more likely it will come to mind, causing the person to believe it is a common and important problem. The information that comes to mind will be skewed toward negative aspects such as occurrences and future problems because individuals are more likely to receive stories detailing the problems, instances, and future predictions of the violence than they are to receive information about the positive aspects such as the rarity of occurrences. Current day media outlets feature not only the crime but also reactions of the community;

interviews with advocates, witnesses, and victims; memorial services; and related stories all around the country. Many of the stories covered by present day media would have never been covered historically but prove to be the most appealing story to cover for lack of other news to report (Best, 1999).

Hall, Chritcher, Jefferson, Clarke, and Roberts (1978) revealed through the analysis of the creation of moral panics, that some news is chosen because it is out of the ordinary, has some sort of shock value, or hits the sentimental emotions of viewers. However, other news is also chosen or tailored to reflect elite interests and protect those who enforce the rules, most often police officers. If a story accomplishes both, it is more likely to have a lasting impact. As media outlets are increasingly more likely to be owned by multinational corporations, the influence of the conglomerates reflecting the interests of the ruling classes are more pronounced. Further, as we move into the post-industrial stage of capitalism, the representation of the working class in the media has ceased to exist. Barak (1996) describes the result of this phenomenon as individuals having the ability to view "...three kinds of 'classes' constructed by the mass media: the 'rich' classes, the 'middle' classes, and the 'criminal' classes" (106).

The consequences are that the social construction of what constitutes deviant individuals or a social problem is often non-representative of the true nature of the problem. The foundation of knowledge produced is that offenders are of a lower class, many times a minority status, and commit atrocious and shocking crimes or deviant acts that will one day lead up to the unspeakable crossing of moral boundaries that threaten the social order. That most of society is unfamiliar with and rarely personally involved in the actions and crimes aired on news networks and other media outlets, the typology of

offenders presented, and the prediction of their future behavior are rarely challenged as most in society have never personally been in contact with these types of offenders.

It is important to note in the section discussing the media's influence on disseminating information crucial to the development of a moral panic that recently the awareness of this key player in attributing to moral panics has resulted in using it as a tool to create the opposite effect. For example, Angela McRobbie and Sarah Thornton (1995) indicate that many industries such as fashion and music favor the media's creation of fear in the public because it exponentially increases profits as "nothing could be better for sales than a bit of controversy" (572). Further, many agents of social control, such as police officers, are aware of the problems of exaggerated fear and have taken an interest in monitoring the information reported to prevent such panicking. Last, because of concerns over the consequences of moral panics, critics are using the media more and more to voice their criticism of the portrayal of deviant behavior. It seems that this new recognition of mediated panicking has "drawn attention to the importance of empowering folk devils so that they or their representatives can challenge the cycle of sanctions and social control" (572).

What is suggested here is that certain segments of the media are not only increasing awareness of the problem but are also opposing arguments and viewpoints that neutralize or balance the information presented. While it is suggested that most panics are seeing the installment of this opposing force, such neutralizing strategies have not been applied to those offenses viewed on the extreme end of "folk devils" such as sex offenders, whose offenses rarely receive attention from researchers or advocates to

contest the information about the threat disseminated by the media and conceptualized by the concerned public.

### Activists, Experts, and the Government

Usually following dramatic and extensive media coverage, a strong public fear of the problem and majority support for reform emerges as a result of the synergistic interaction of activists, experts, and governmental bureaucrats or policymakers. While the media are initially influential in creating new social problems, the difference between a problem being short-lived and becoming an institutionalized, long-term crusade is created first by the efforts of activists who assume ownership over the problem and then through the enlistment of experts to strengthen their argument. Once these two key players have succeeded in obtaining majority support, they demand the attention of the government, who holds the power to institutionalize and legitimize reactions into policies that can legally control the problem and those actors responsible for the problem.

The activist, moral crusader, or entrepreneur is usually a surviving victim, relative of a victim, or part of a special interest group and is motivated not only by self-interest but also a moral indignation. Using the media, most moral entrepreneurs aren't interested in objective evidence or balanced reporting, and they will often exaggerate the problem to justify their cause (Cohen, 2005). However, this is not to say that their crusades aren't well intentioned. Most truly believe in the cause and feel that what they are fighting for is honest and legitimate. In other words, they are engaged in a humanitarian effort aimed at reforming, changing, or challenging a social problem that, if left unaddressed, will produce moral decay and social disorder.

Crusaders are little concerned with the means as long as the ends are achieved. They rarely question pathways to success, tools used to achieve that success, or the consequences of their actions and proposed plan. Whatever the unintended consequences could be, they are rationalized away or outweighed by the benefits. Thus, the crusade to create legislation becomes a vehicle for maintaining boundaries consistent with or not challenging the dominant ideology of the ruling classes. Inasmuch as activists pursue the assistance of experts and the governmental agents to back their causes, these experts and government officials are enticed to contribute based on less pure motivation.

When politicians and experts get involved in social problems, they bring a host of ulterior motives to the table. As it can be argued that no act is completely altruistic in nature and everyone brings ulterior motives to their actions, in arenas where a large population of individuals are susceptible to the information being presented, the ulterior motives are capable of causing significantly higher instances of harm that can affect a large portion of the population in one way or another. The two groups are very influential in institutionalizing a social problem and maintaining the panic stage. Without them, activists could not keep widespread support or mandate the policing of those individuals who perpetrate against the values they hold to be morally superior. The government is the tool through which laws and policies are passed. It is through legislation that social control agents can prosecute individuals who have been declared the offenders in moral panics. Since the 1970s fighting crime has been central to political campaigns and is offered up with little opposition. Those who do not make the war on crime a central focus of their campaign or time in office often lose a majority of the public's support. In getting involved in social problem solutions, politicians are assured a

non-controversial issue that is easily understood by voters and widely supported by campaign contributors. Further, there is an economic incentive to keep funding and jobs for those social agents responsible for combating deviant acts.

Another central player in keeping momentum with regards to social problems are experts. Statistics alone are sufficient to gain public interest and support, however, having certain experts from the fields such as psychology solidify the need for policies and boost public support for such laws. Experts are symbolized as particular know-it-alls with regards to certain topics, are generally respected by the public, and can be very persuasive. Incentives for these individuals are clear-cut. Social problems give a fresh topic to explore, public notoriety and exposure, and job security. This is not to say that all experts get involved for only these reasons. Many can be altruistic in their intentions or at least believe that they are acting in a morally righteous way (Best, 1999). However, in present day society experts have become standard staples in news stories, and it is unclear how the overexposure and seemingly endless supply of individuals claiming to be overtly knowledgeable in specific areas of violence and social problems has affected the view of the general public. There may be a developing pessimism towards the believability or credibility of these experts. Even so, their continuing presence in the media indicates that there is still some overall persuasion on account of their testimony, and the potential effect of swaying the public towards a belief in an imminent problem must be mentioned in the discussion of the iron quadrangle.

Overall, the formulations of social problems by the media, activists, politicians, and experts is almost always representative of the beliefs held by the upper classes, rarely the voices of the lower classes, and are supportive of reforms that don't challenge the

status quo. Even the ability to get involved in petitioning for a cause involves the use of elitist connections such as politicians, heads of activist groups, and media conglomerates that the dominated groups of society are unable to call upon. Further, the more marginal members of society rarely portray the necessary credibility to persuade a large portion of the population. Those moral crusades that succeed in reforming the laws by drawing in majority support are consistent with idealized views of the dominant social order. Thus, it seems that moral panics over deviance and problems plaguing society tend to revolve around and are blamed on the dominated classes rather than the dominant classes and represent things done to the former by the latter for the alleged greater good of all. Hence, harms created by the elite, such as white collar crimes, are almost always ignored or downplayed even though they often create more harm than those deviant acts society feels most threatened by.

#### Offenders and Victims

It is evident from looking at the creation of moral panics that responsibilities for these problems are ascribed almost exclusively to individuals rather than to social structures, institutions, or cultural relationships when, in fact, to fully appreciate a problem requires an understanding of inter-connections between these three levels of interaction. Barak (2003) has shown through his reciprocal theory of violence and nonviolence that violence, or more broadly, conforming or nonconforming acts are committed on every level of social interaction: interpersonal, institutional, and structural. However, a lot of the violence beyond the interpersonal level is sanctioned and/or ignored, and it is usually the interpersonal violence that draws the most attention within a society, followed next by the institutional, and last by the structural. The cultural

structure in the United States is one that emphasizes an adversarial and individualistic way of life as opposed to one that emphasizes a mutualistic and communitarian way of life. The former creates a need to displace our individual shortcomings or societal shortcomings onto a tangible other. This displacement allows for a dualistic approach of good versus evil, right or wrong that is based, in part, on the dominant ideology, and there is, seemingly, little room for recognizing the gray areas of behavior and morality. In reaffirming the moral and normative expectations in society, identifying others who are morally inferior helps to re-establish the boundaries between right and wrong. The images of deviants leads to an expectation that offenders fall short of human status and are incapable of decency and social appropriateness.

As Glassner (1999) states, “In just about every contemporary American scare, rather than confront disturbing shortcomings in society, the public discussion centers on disturbed individuals” (6). In the process of securing the dominant interests, the Iron Quadrangle provides a picture of disturbed individuals who are members of marginal classes that often threaten the ideals of patriarchal, homophobic, and capitalist society. Moral panics often portray the problem as random, such as “random violence,” and help to establish a need to develop a way to identify these individuals who may pose a threat or fit a profile. Typologies are assigned to offenders such as patterns of behavior, “gateway” actions, and similar motivations. As this is often ineffective, working and non-working classes, ethnic minorities, and other marginal groups (e.g. lesbians, transsexuals, and sexual offenders) who do not adhere to norm expectations become objects of or subject to societal defined ends of stifling the threat. In nature then, these individuals’ “deviance” (real or imagined) may be exploited for ideological or commercial interests.

Deviance exploitation refers to the direct exploitation of individuals based on their marginal status in society. The existing images and stereotypes of the marginal members of society, such as skin color, disheveled appearances, and location of residence, is used to “put a face” on an unknown scare. This “face” of “random violence” stops the panic from going completely out of control into a disorganized unsolvable fear as individuals within society will be able to recognize this plague of violence in case social control agents aren’t capable of protection in a particular instance. While this may lead to “vigilant justice” or retribution, there is a more organized form of “criminal justice” or state retribution, both used against offenders only the latter of which may be commercially exploited. In prosecuting offenders or maintaining control over a stereotyped group, a profit is made directly and indirectly, not only by those employed and in control of the crime control industry but also by those employed in and in control of the news media. Feeding on stereotypes, these organized forms of control come full circle to succeed in an original motivation of dominance, that of accumulating and maintaining wealth (Cohen, 2005).

The inevitable consequence of categorizing deviants such as sexual offenders is sensitization. Characteristics such as greasy hair, tattered clothing, age, and skin color transition from neutral stimuli into an acute symbol for potential danger or actual deviance under sensitization as this refers to the process by which individuals become more sensitive to cues as red flags that at one time may have caused no reaction whatsoever. Since these symbols in and of themselves aren’t threatening or harmful, sensitization leads to a widening net and larger category of offenders or potentially harmful individuals. The public becomes acutely aware of actions that have been placed

into this new category of deviance, and this leads to stricter control over acts that were once labeled as non-criminal. For example, the use of marijuana in this country did not become criminal until it was attached to Mexican immigrants who were thought to be selling the substance to America's youth, black jazz musicians, and those whites lacking moral character (Schlosser, 2003). Other acts that were once minor violations rarely paid attention to become front-page stories of the impending deviance embarking on an area. The mods and rockers in 1960s Britain created such sensitization as acts of mass congregation of those who held the appearance of the group, and fights in the streets were given the utmost precedence as they were overwhelmingly reported by citizens following the groups categorization into deviant categories. Appearances of the mods and rockers and other symbols such as zoot suits, although not controlled, became reasons for citizens to closely monitor the behavior of those portraying the symbols that potentially led to threatening behavior. Thus a population already on edge over a cue could be counted on to overreact at any behavior as it was all too easy for them to feel ill at ease over the sight of the supposed "deviants" (Cohen, 2005).

Cohen further illustrates the reliance on using marginal members of society to identify potential threats of random violence in showing seven categories of social identity that most often fall prey to stereotyping during moral panics. While these categories almost always involve individuals, certain institutions that run perpendicular to dominant ideology are not immune to categorization. First are the young, working-class violent males. In the United States, there is a constant fear of young African American males and an overwhelming belief that this group is constantly threatening social order. Also pertaining to the younger population, those who engage in school violence and

bullying easily surge hysteria because these instances, while rare, portray an extreme and dramatic case with a very vulnerable, innocent victim and a tragic offender.

Drugs come into play quite often in identifying offenders. Either they are taken at the wrong time and place by the wrong people, as in the cases of teens who overdose on ecstasy where blame is placed on those who prey on children by selling substances to make a quick and higher profit, or drug use is pinned as an identifier into potential deviance. Images of the crazy crackhead who will senselessly attack others, prostitutes plaguing society for their next quick fix, and addicts who will rob, steal, and kill for their next high are often portrayed. The stereotyping of drugs is a prime example of how panics are pinned to the lower classes. Substances such as crack and heroin, associated with lower classes, are portrayed as dangerous while drugs such as cocaine, most often used by the middle to upper classes, are relatively ignored, as users of the former often prey on or become parasites, while the users of the latter turn to alleviate and provide means for dealing with their abuse.

Most pertinent to this thesis are categories involving child abuse, satanic rituals and pedophile registers. These types are the most explosive in regards to the development of a large umbrella that encompasses many types of offenses as these acts severely cross the boundaries of acceptable moral behavior. While these behaviors are almost exclusive to individuals, institutions such as the church, communes, and pagan faiths have also fallen under the scrutiny of hysteria and vigilance. Blaming the media and the push for censorship of institutions promoting “immoral” sex and violence are the most forthcoming examples of a type of social identity that does not blame a certain offender

per se but portrays instead a breakdown of social morality in which people may be seduced into despised behavior.

The last two categories, welfare cheats and single mothers, as well as refugees and asylum seekers, show how easily those of marginal status and little power fall victim to stereotypical assumptions of what deviance and the threat of it looks like. It also shows evidence of a denial of larger social problems that need addressing. While it is easy to blame single mothers and accuse them of cheating the system, it is harder to look into why so many need government services. Refugees and asylum seekers exacerbate the problem of ineffective social programs and social welfare but create an easy diversion from systemic issues.

In creating stereotypical offenders, society needs a suitable enemy, one with little power or status in society who is easily targeted, based on characteristics that oppose norms and morals. However, in the creation of an offender, there is also a need for a suitable victim, one who is easy for the general public to identify with and compare to themselves as well as an individual who is helpless, harmless, and truly undeserving of the violence inflicted upon them. In *Random Violence: How We Talk About New Crimes and New Victims*, Joel Best (1999) identifies the numerous rights movements of the late 1960s and early 1970s as being responsible for producing a victim-centered ideology. While the victim has always played its role in moral panics, the centrality of the role in fighting deviance did not emerge until the end of the liberal era. This is most evident by the seemingly permanent removal of rehabilitation and the medical model in the criminal justice system.

With the new victim ideology came policies for victim advocacy such as victim compensation, impact statements, and allocution in court hearings. As victims' rights were increasing, the rights of offenders were decreasing. While on the surface it is hard to dispute the importance of victim's rights, the shift has stripped many offenders of protections such as due process and just punishments. The Sexual Predator Statutes of the late 1930s and 1940s were repealed after it was determined that they violated an offender's right to due process as they were punished based on a psychiatric evaluation of court appointed psychiatrists; however, states were still able to implement the laws through loopholes in the system (Jenkins, 1998). The Michigan Supreme Court declared the Sex Offender Registry unconstitutional based on a violation of due process in that offenders were not able to challenge their assigned level of potential threat that inevitably determines the length of time required for registration (Ashenfelter, 2002 June 4). The decision was later reversed following a U.S. Supreme Court ruling in *Connecticut Department of Safety v. Doe* 2003 that declared the constitutionality of the registry in that it did not constitute punishment. Further, other states have come up with creative punishments for sexual offenders such as the case of a Delaware man ordered to wear a T-shirt that states, "I am a registered sex offender" to work for 22 months following his release from prison for two counts of indecent exposure (Man ordered to wear "sex offender" t-shirt, 2006, November 6). Legislation passed in the late 20<sup>th</sup> and early 21<sup>st</sup> century with regard to sexual offenders has often seen widespread support for retroactive application, a clear violation of *ex post facto*. Further, evaluative measures on policies fail to address the negative consequences on offenders, and amendments to legislation focus on the primary, short-term needs of victims. The focus on victims has exacerbated the

panics over social problems. With a victim who can be easily generalized, the deviance is viewed as a larger problem and inaccurately reflective of the true threat that is very characteristic of random violence, a threat that permeates every sphere in society and has long term consequences as well as ripple effects.

The “cut and dry” separation of victimizer and victim has allowed for the strengthening of the popular duos of hero and villain, good and evil, justice and injustice and has led to victim and preventative education that is most responsible for the fallacy of “stranger danger” as individuals identify themselves and those they know as the heroes, the good and just individuals of society. The association beyond that of stranger of the villains, the evil, and unjust members would insinuate that they are no better than those they despise. Further, it would indicate that they are not good members of society. Moreover, the term *victim* has become synonymous with damaged, passive, and powerless people and, while the task of labeling victims negatively is apparently as easy as labeling offenders negatively, the negative label puts victims off so they are less likely to report their victimization. On the other hand, the victims rights movement has helped turn some victims into “survivors,” “recoverers,” and “advocates.”

#### Rule Enforcers and the General Public

The concern over moral panics, the push toward widespread fear of random violence, and the dichotomy of the victim and offender is all a product of the need for the general public to be increasingly aware of a threat and to easily understand that it exists.

Quinn, Forsyth, & Mullen-Quinn (2004) explain that

Societal reactions are a complex interaction of typical citizen’s [sic] felt need for safety, political pressure to meet these needs through easily

understood legislation, increasingly sensational media news coverage, distorted reports of re-offense rates, and the venting of parental anxieties for their children in a world perceived as ever more dangerous and unpredictable (217-218).

At the start of a moral panic there is a vague uneasiness, a crisis of potential victimizations from an unidentifiable source, and problems of uncertainty defining the nature of the problem. Society then converts this ambiguous situation into a definable concern. As Glassner (1999) explains, “The belief in a tangible threat makes it possible to explain and justify one’s sense of discomfort” (xx). The reaction of a concerned public shows the delicate balance that is needed to gain support but also to curb a complete disruption of peace and order due to the fear of potential victimizations by random violence. As Richard Nixon stated, “People react to fear, not love” (1999:xxviii). It is important for people to become fearful but also to be able to easily identify a threat in order to easily understand and support legislation reform.

Once a panic has peaked, the key players have drawn in a concerned public, and polls on public opinion support legislation reform, social control agents become integral in solving the problem. Lemert defines the “social control culture” as including laws, procedures, programs, and organizations that are put into place to help, rehabilitate, punish, or manipulate deviants (Cohen, 2005). An ideal and just application of social control is rarely achieved, especially in the midst of moral panics and control agents like all others are influenced by the hysteria generated from the exaggerated and distorted truths of the deviance currently feared.

Tactics for achieving control are mutated through diffusion, escalation, and innovation. While at first social control policies and agents target specific individuals and deviant actions, there is a slow expansion from the original deviance and actors to other deviance, other actors, and other areas shown to hold a potential threat. A multitude of other actions are added to the list of symbolic indicators of deviant activity, and the policies put in place to target the deviance become preventative in nature in order to achieve a feeling that random victims are protected from random violence. In addition, the idea that policies need to be amended due to their ineffectiveness creates the need for innovation. The application of innovation allows agencies to exercise more control as well as divert blame from institutions and larger social problems onto individuals and the idea of free will. Quiet times following the implementation of policies will be used to justify success while any deviance will be ignored, downplayed, or used as justification for amending legislation to include harsher penalties.

The result of such an application of justice is compared to what Elliot Currie describes as the “victim industry.” Similar to witch hunters, agents of social control obtain an untouchable status and rarely suffer repercussions for their unjustified actions against deviant populations. The absence of a checks and balances system leaves social control institutions with extraordinary powers to suppress deviants. Moreover, widespread public support and/or resistance creates a vested interest for these agents to apprehend and process those specific offenders who have been targeted. Consequently, a large number of individuals are labeled as a threat, demonstrated by high numbers of arrests and prosecutions. Logically, then, an increasing number of innocent people or

low-risk deviant individuals are included in the more extreme category of deviants who warrant concern.

Columnist George Will very intuitively characterized the social control response to panics as the Moral Equivalent of War (MEOW) in 1992. Since the Nixon era, the United States has become accustomed to declaring war on social problems, most notably the “War on Drugs.” The country is militaristic in nature, and until the Korean and Vietnam wars, the U.S. could say that in every instance where war was declared, victory was very rapidly obtained. War is very easy for the public to understand and put faith into. The metaphor also creates a particular complex set of meanings. War on something is the belief that it is a rightful cause, there is a clear cut enemy, there are certain sacrifices that need to be made with regards to individual and economic rights, and that it involves a brief struggle, with victory an imminent result.

Social control agents become those on the front lines of the war armed with legislative policies and almost free reign to implement the law in any way deemed necessary. Declaring war also has the benefits of being dramatic and so attracts media attention, moves the social issue being attacked higher on the political agenda, and silences critics. Overall, the war is a justified response to an innately evil enemy. People are traitors if they do not support the cause of the war, and fighting the enemy is a common cause among all of society (Best, 1999).

#### On the Inefficacy of Declaring War

Declaring war on social problems is problematic in that these issues are more complex than those a war is intended to deal with. Declaring war indicates that there are simple explanations for these problems and clear-cut solutions that, if rapidly

implemented, will succeed in complete eradication in a short amount of time. Clearly when a complex, rarely understood problem is attacked without examining root issues such as classist attitudes, the actions taken rarely solve the problem but more often exacerbate it, as quick implementation has many unseen and unintended consequences. The result is an abandonment and declaration of defeat even in light of evidence of positive results. The failure to rapidly erase the problem leaves little room for society to declare anything but failure.

In the end, what is usually “achieved” in this short amount of time is an escalation of penalties and punishments that are not abandoned even with the declaration of defeat because, while the “war” was unsuccessful, it is the individual actors who are accountable for this failure. To cease implementation of control over these populations is too dangerous to a society. Instead, legislation stays in place but the focus shifts to a new problem to be tackled. As sensational events come to the attention of the public, focus may again be placed on controlling this type of deviance, and the legislation may face further amending that almost always sways in the direction of fewer restrictions on enforcement and harsher penalties for offenders. Because of victim-centered ideologies, there is little concern in examining the ineffectiveness on the side of the offender or the unintended consequences of steep penalties and harsh punishments toward such a population.

## CHAPTER III

### PANICS OVER SEXUAL OFFENDING

Moral Panics often exacerbate the original problem and create many unintended consequences, doing little if anything to really tackle the issue. History reveals that sexual deviance is often dealt with through moral panics. Several time periods beginning in the 1600s with colonization, sporadically through the mid-1700s to the mid 1800s, and throughout the 1900s (more specifically, 1937 to 1940, 1947 to 1950, and from 1987 to the present), show characteristics of moral panics with regards to addressing the problem of sexual offending, the latter dates more acutely. Congruent with the literature, the creation of sexual boundaries of deviant and non-deviant behavior, the reaction to crossing the line with sexual behavior and later, the reaction after defining these deviations as crimes has been consistent with moral panics. Key players have successfully created a concerned public and initiated widespread support for social control and legislation reform. In creating this support, the consequence has been a misunderstanding with regards to the nature of sexual behaviors, the definition of offenders, and a clouding of the underlying motivational forces creating the boundaries and issuing control. Last, as control is implemented and misinterpretation is maintained, harsher penalties and unjust punishments lead to a failure to effectively solve the problem or protect the public.

In examining the root issues associated with sexual offenders and the moral panics associated with the defining of social problems, it is important to look at how

boundaries of sexual deviance have been drawn throughout history. On the surface, it is important to understand the motivation behind creating boundaries, because the limitation on some sexual behavior has thick lines of right and wrong. The escalation of panicking with regards to sexual deviation is remarkably fast, and the consensus of the dire threat sexual deviance poses is rapidly achieved and uncontested. As American society moves into the twenty-first century, some of the major political issues involve sexual rights and wrongs such as homosexuality and abortion, and, further, the implementation of legislative control over the sexual offender population has taken a front seat in most states.

Erich Goode and Nachman Ben-Yahuda (1994) show that panics regarding sexuality and sexual activities are due to unsettled gender relations and roles of women, unclear boundaries of sexuality, and family and the care of children. Underlying issues surrounding sex crime panics can be understood only through an evaluation of the creation of the foundation of knowledge of sexual rights and wrongs that Americans hold to be evident moral truths today and how they are reflective of the broader concerns and problems outlined previously.

### **A History of Sexuality**

At the onset of colonialization in the Americas, the Pilgrims brought over many of the sexually related traditional beliefs of Protestant Reformation from England that involved, most centrally, sexual intercourse within marriage only for the sake of procreation. However, this reformist view also recognized that sexual activity comprised pleasure and love as well, and married couples were allowed to engage in sexual relations for both reasons. Family was an important asset economically as patriarchal societies

considered the family unit as a “little commonwealth.” Premarital intercourse was frowned upon and sometimes penalized because bastard children economically burdened communities, and men would not be able to ensure that the children within their commonwealth were legitimate heirs.

Important as these views were, premarital relationships were commonplace. About thirty percent of marriages between 1550 and 1750 could be labeled, using current day terminology, “shotgun weddings,” or those unions taking place while the bride is already pregnant. Further, contraception, while condemned, was frequently practiced in England. Women used everything from laxatives, pessaries, and bloodletting to either prevent pregnancy or abort fetuses. Homosexuality was practiced by all echelons of society and was openly condoned within the higher classes. European men of the upper classes who engaged in sexual acts with both males and females, referred to as libertine rakes, were highly regarded as the hegemonic masculine, as they could command obedience and respect from both genders. This sort of free sexuality or behavior that traversed beyond acceptable boundaries was seemingly class specific. While men in the higher classes were able to engage in homoerotic behavior, men in the middle and lower classes were executed if caught engaging in such behavior with anyone but a libertine rake. Even when practicing sodomy with the upper class men, the lower class men were still shunned and thought to be effeminate. Women were not allowed to engage in homosexuality. To do so indicated some sort of chemical imbalance or abnormally large clitoris, and women from the lower to middle classes during the 17<sup>th</sup> and 18<sup>th</sup> centuries were eligible for the death penalty should they be found engaging in such behavior. The use of contraceptives was class specific as well but differed from the distinctions placed

with regards to homosexuality. Women of the upper and lower classes used contraceptives frequently while women in the middle classes did not gain control over their own body or sexuality until well after the seventeenth century for almost purely economic reasons. Women in the lower classes were allowed and most likely expected to use contraceptives as they frequently worked for upper class males who engaged in adulterous sexual behavior with them and could not risk an illegitimate pregnancy. Women of the upper classes used means for preventing pregnancy if they had already had a sufficient number of children but also had more power, control, and access to contraceptives and abortion techniques if they secretly wanted (Freedman, 1987).

While many of these views, values, and practices carried over to the Americas with the Pilgrims, there were some significant differences and changes due to motivations to distinguish the New World as separate from Europe. The English settled in the Americas not only to improve their economic positions but also to create a purer church, and the pressing issue was claiming the new region as their own.

Settling in the new land involved creating a sustainable population, taking over land from native people and creating a hierarchy of control, boundaries and a system of law, as well as economic prosperity. The control over sexuality that ensued in the 17<sup>th</sup> and 18<sup>th</sup> centuries sought to indirectly and directly achieve these goals and shaped how sexuality evolved during the 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> centuries. Underlying motivations were based on ideology, gender relations, racism, family, care for children, and financial stability (D'Emilio and Freedman, 1988). The state having a vested interest in controlling sexuality provides proof that there are no universal rights and wrongs but a subjectively

based foundation of knowledge that permeates into the formal and informal sectors of social control.

During colonial times there was an obvious relationship and intrusion of religion into state but also vice versa. As was the case in many instances where there is a vested interest in swaying a large number of people to act and behave according to a new ideology, those pushing for sexuality reform attached those ideas to the Puritan faith. There was a need to separate from England but the Puritans also needed to feel culturally and morally superior to the natives of the land to gain control and enforce change. In order to keep control and establish a new nation, colonists needed to repopulate the new world and, for purely economic reasons, families and the state had a vested interest in maintaining procreation within family structures to help with their own economic growth and the growth of their future generations.

Creating a hierarchal control may have been the first incentive of placing controls over sexuality. Upon coming to the Americas, the Pilgrims were exposed to the Native American tribes who engaged in sexual practices very different from those of the Europeans. While monogamy was a cherished value among the settlers, the Indians practiced polygamy quite frequently. A cultural difference easily explained by the individual vs. communal ways of life of the two groups, the native tribes shared wealth among all members of the group while the Europeans practiced a family-specific, early capitalist model. Regardless, the stark contrast provided of natives practicing premarital sex, sodomy, switched gender roles, and their acceptance of divorce and remarriage, made the settlers feel that they were culturally superior and had a duty to bring

civilization to the new world. The continued suppression and control over sexuality was a way to justify their urge to claim the land as their own.

Native Americans were not the only ones to suffer from the views of cultural inferiority with regards to sexuality and sexual practices. Africans who settled in the new world as slaves were viewed as sexual beasts that had no sexual morals and were lustful, sensual, and aggressive. D'Emilio and Freedman (1988) state, "As with American Indians, sexual stereotyping provided one means by which the English colonists justified their domination of Africans" (35). While interracial coupling had been overlooked and allowed in the early seventeenth century, when the ratio between male and females was significantly lopsided, some areas having four men to every woman, the evening out of the gender population led to laws against interracial relationships. This further strengthened the dividing line between the races and inferiority of the slaves.

Through the stereotyping, white male slave owners frequently engaged in sexual behaviors with black females. These sexual acts were overlooked as acceptable because it was believed that the slaves had a beastlike appetite for sex and the men had control over them, not only through slave ownership but also due to the power differential granted to them as a result of patriarchy. However, to maintain the line between the races and hierarchy of power, interracial children were declared slaves in the "one drop is good enough" attitude and clause. The beastlike appetite transferred onto black men as a fear that these men would attack the white women in society. Although the rarest type of interaction, the rape of a white woman by a black man, this was the most serious sexual offense and the most harshly punished. Slaves who were accused of attempted rape were to be castrated under law; however, most were lynched as if they had been legally

recognized as committing the act. Attacks on black women provoked little to no response while the taking of a black man consensually into a white woman's bed was grounds for divorce.

Gender inequality was acutely represented in early sexuality control. Western culture had long feared the sexual appetite of women. Viewed as lesser beings, females were thought to be unable to control their urges as well as their smarter male counterparts. If left uncontrolled, women could seduce men to give into their primal urges and, consequently, commit sinful acts. In effect, women were more often convicted and punished for adultery and premarital sex. Because it was more obvious when a woman committed these acts because of a potential resulting pregnancy on top of patriarchal notions, she was more often in the spotlight than the male with whom she had participated in the act. Women were also more publicly humiliated and punished for these acts than men. Public punishment and humiliation served the purpose of relaying the acceptable boundaries and moral guidelines in a time when media was far less structured than it is today (D'Emilio et al., 1988).

By the end of the seventeenth century, the colonies were undergoing a significant change. Commercialized agriculture, the Great Awakening, and the transition into industrialization had changed the nature of the economy and family life. The population was increasing, and towns were rapidly becoming cities. Those in rural areas were seeking land on the outskirts of the central population in order to obtain more land. The church and state's moral control of behavior relied on community enforcement and the increase of the population, and spreading out of homesteads made it very difficult to effectively institute boundaries. The economy of the family had shifted as there was less

land among family units due to the increasing population and the new emphasis on marketplace goods. Families had less leverage with which to arrange marriages and started to limit the size of their offspring due to a decreasing reliance on land labor and lower rate of infant mortality.

These changes in society did a number of things for sexuality. First, because marriage was no longer based on economic incentive, young people started to rebel and viewed the union between a male and female as a choice based on love and lust. There was a sharp increase in premarital pregnancy as a way to ensure that a couple could wed in spite of any resistance from parents. Second, procreation as the primary purpose of sex between married couples took a back seat to sexual gratification and attraction. The inability of the church and state to control morality through community watches and the weakening of the church, due to the Revolutionary War, led to less involvement of both in defining sexual deviance (D'Emilio et al., 1988).

The Great Awakening placed responsibility on individuals to control their actions; however, increasing knowledge in the medical field on the subject of reproduction separated conception from sexual gratification, indicating that pleasure derived from sex was independent of the ability to conceive. This reinforced the idea that there were other functions of sexual acts besides conception, and human beings had a right to pursue those other ends. Last, the shift to a market economy and the Industrial Revolution led to new class hierarchies closely populated among one another. The influx of immigration led to sexual diversity and the inability or lack of concern over regulating what types of sexual behavior different classes engaged in. Amid other more pressing problems and changes, sexuality was no longer in the forefront of concern.

Some of the issues that arose from these changes were that women were increasingly being viewed as marriage material based on beauty and sex appeal rather than meekness and spirituality. The ratio of men to women had shifted and there were now more women than men. The lower emphasis on marriage and the rising population made it more difficult for women to marry. Still economically dependent on men, this made it extremely difficult for women. Further, the shifting view of sexuality created problems of harassment. The medical explanations of the sperm actively seeking out the egg in reproduction led to a belief that women were passionless and needed to be pursued. Premarital sex without the promise of marriage led to a higher population of illegitimate children. However, as Robert Wells has stated, “governments in the American colonies gradually lost interest in prosecuting sexual sinners so long as the children of sin were financially cared for” (1988:49). Basically, the harassment of women and push for premarital sex was not addressed, and lower class women were afforded no protection from the law.

In seaport cities, the sexual climate was seemingly out of control. In reviewing the nature of sexuality of Philadelphia during the Industrial revolution, Clare Lyons (2003) reveals that the city had rampant prostitution, homosexuality, and other deviant sexual activity. Books such as *The Adventures of Roderick Random* detailed homosexual erotic behavior and gave instructions on how to initiate conversations leading to such acts with others. Bookstores could barely keep them in stock. Men of all classes were engaging in sodomy and urban dwellers viewed these acts as the ultimate bond of friendship between two males. While neighboring areas were still preaching stories of Sodom and Gomorrah,

the efforts of the puritanical beliefs were losing steam as cities had all but discarded traditional morals and the new sexuality was spreading to outlying rural areas.

The rapid changes to the social fabric and the changing nature of class and economic structure created a push to regain control. The installation of the Republican government re-instilled a fear of instability that was projected onto a fear of passion and the giving way of morals for lust and seduction. The belief that these urges undermined civility returned to the dominant ideology and resulted in widespread support for the moderation of sexuality. In order to control the economic strain placed on the state from illegitimate children, many areas instated laws to tightly control women's chastity. Stephen Robertson (2006) provides the example of New York City's Seduction Law passed in 1886 (similar laws had been added to legislation in 35 states between 1848 and 1900) that incriminated the act of premarital sex in that it forced men to marry women they had raped, coerced into sexual relationships, or impregnated while courting to ensure that the economic support would be there. Women became a symbol of irrationality, and external control over their lust was reinstated. Since marriage was harder to obtain and women were still not economically independent, it became that much more important to ensure that they stayed pure until a suitable male was found.

With the influx of the immigrants and the changing class structure, the control hierarchy had to be modified to include these new categories of people. The cycle of creating control had begun once again. The Republican government frequently referred to the weakening of European nations due to a lack of sexual moderation and warned that the same could happen in the new world. The purpose was to show the inferiority of immigrant populations arriving from across the Atlantic and the dangerous practices they

brought with them. Further, legislation put in place, such as the Seduction Law and other similar statutes, were rarely available to the poor and African Americans. The reasoning was that these classes were morally inferior and thus did not have much respectability to lose. The line between inferior and superior, civilized and uncivilized, and the hierarchy of control became further defined (D'Emilio et. Al., 1988).

The recurring themes related to the drawing of sexually deviant and non-deviant boundaries shows that the urge to control sexuality and punish those acts deemed immoral was not a reflection of right and wrong behavior but the dominant ideology and ulterior motives of those in the upper classes. Sexuality became the tool of control and dominance among certain members of the population over others. In all instances where sexual behavior received spotlighted attention, the following issues were present: reproduction and family, gender, domination, and the debate of private verse public right to know. Throughout the 20<sup>th</sup> century, these issues continued to play a role in shaping how sexual deviance was viewed and controlled.

### Sex Crime Panics in the 20<sup>th</sup> Century

By the 1900s, the role of women was significantly changing as they were beginning to enter the workforce, attend college, and, with the suffrage movement, would gain the right to vote. With medical advancements in the late 1800s and the newly acquired sense of individuality, women were also being viewed once again as sexual beings. Sexual intercourse for the sake of gratification and erotic acts between males and females was no longer typically prohibited and rarely legally punished. Community enforcement had long ago had been replaced by an insistence of privacy, and while sexually related entertainment had been present throughout history, prostitution was an

established fixture in cities all over the United States, and other female entertainment was widely recognized.

Around the turn of the century the first studies that created an awareness of sex crimes started appearing. The *System of Legal Medicine* published two articles, the first in 1894 entitled *Sexual Crimes* by Dr. Charles G. Chaddock, which used European statistics to claim 80% of rapes involved children. Dr. W. Travis Gibb followed up with his article, also in the same journal edition, the *Indecent Assault of Children*, which focused on incestual acts and the molestation of children that created an awareness of family abuse and established these acts as crimes. His article also indicated that the majority of those molested belonged to the poorest classes and immigrant families. With immigrants continuing to arrive and industrialization redrawing the class structure, a heightened classist attitude emerged with regard to the superiority of the white middle class over the lower classes and immigrant population. Differing views and practices of sexuality had always been used to draw a line between civility and moral righteousness in order to dominate certain groups. Misconceived views, such as those held by immigrants from Latin America that venereal disease could be cured by sleeping with virgins, did not help the animosity felt by the dominant population and the urge to control and regulate the lower classes. However, this time around the control of sexuality not only focused on moral rights and wrongs but also placed new emphasis on the legal and illegal boundaries of sexual acts (Chaddock 1894, Gibb 1894).

The changes in the social structure, gender interaction, and the newly identified sexual crimes such as incest and pedophilia created an urge to understand sexuality beyond that of biology, and psychologists started to intensively study sexual deviance.

Society initially turned to the field of psychology because deviance was still portrayed largely as a result of a mental defect. Criminals underwent treatment by psychologists after committing a crime, and rehabilitation was a major component of punishment. The resulting viewpoint was a belief that sexual deviance led to all other types of deviance, and there was an interest in being able to identify the sexually deviant population and, further, to understand what acts fell under the legal boundaries (Jenkins, 1998).

Using Freud's psychoanalytical theory that outlined the maturation of sexuality within a person, psychologists inadvertently created the term Sexual Psychopath. Psychopathy is characterized by a lack of empathy or conscience and poor impulse control, usually coupled with manipulative behavior. Robert Hare, who developed the diagnostic checklist for psychopathic personalities, describes psychopaths as "Intraspecies predators who use charm, manipulation, intimidation and violence to control others and satisfy their own selfish needs. Lacking in conscience and feelings for others they take what they want and as they please violating social norms and expectations without guilt or remorse." Psychopathic behaviors became intimately tied to sexuality due to the misuse of the term and definition in titles of journal articles, newspapers, and other mass media outlets. Sexual psychopathy then evolved to explain the selfish needs of certain types of psychopathic personalities that are obtained in purely sexual ways and intimately tied with masculine domination and power.

The underlying fear was that when the masculinity of a male is threatened, an inner beast that is driven by psychopathic tendencies emerges and sexually victimizes women and children to regain that masculinity. This focus was an indirect response to women entering the public realm and the changing meanings of sexuality within society.

That women were now able to gain status close to that of males was thought to threaten masculinity. Children left unattended at home and mothers and wives occupying the same space as males was thought to open up more opportunities for men to act out psychopathic urges (Freedman, 1987).

In a patriarchal capitalist society, there is an unsaid understanding that nothing threatens masculinity more than stripping a man of his ability to be a breadwinner. While women were effectively threatening this title by entering the workforce, the high immigrant population flowing into the United States was also threatening to strip decent wages from the middle class. The inability of the social structure to find balance and stability amidst the changes occurring after the turn of the century was further rocked by the emergence of the Great Depression. The result was the first sex crime panic that lasted from 1937 until 1940.

Medical literature was increasingly highlighting sexual deviance, and in particular, psychiatrist Benjamin Karpman's study on the compulsive sexual offense history of Kenneth Elton was a template for questioning the way sexual offenders were dealt with. In 1914, Kenneth Elton was charged with the attempted rape of a young girl between the ages of seven and ten. Elton was committed to a state hospital but later released and determined to be mentally healthy. He re-offended in 1922 and received a one-year jail sentence and was then charged in 1925 with performing cunnilingus on a nine year-old girl. Debate ensued about the proper way to deal with these types of offenders, as Karpman's study revealed that the current system was failing and offenders such as Elton had no control over their urges.

Media frenzy highlighted the very sensational cases of the Lindbergh baby kidnapping and the Albert Fish murder of Grace Budd that further struck panic into the public. These stories were very gruesome and characteristic of random violence, the types of media stories moral entrepreneurs focus on when fighting for reform. While the Albert Fish story continued to make headlines until his execution at Sing Sing prison in 1936, other stories detailing the immense threat of sexual predators created a fully fledged panic that resulted in the passing of the Sexual Psychopath Laws in 1937.

Under the Sexual Psychopath statutes, “a person convicted of a sex crime could be identified as a ‘sex degenerate’ or pervert or (as suffering) from (a) mental disorder with marked sex deviation and tendencies dangerous to the public safety” (Jenkins, 1998:81). Michigan became the pioneering state, passing the first sex offender statutes, and many other states instituted the statutes on an ad hoc basis, mandating a psychiatric evaluation for charges that ranged from indecent exposure and impairing morals all the way up to sodomy and rape, attempted and completed. The broad umbrella encompassing those who could potentially be sexual psychopaths was a direct result of the fear of widespread deviance and the view that sexual deviance would lead to more sexual crimes as well as many other types of offenses. Even the smallest offense needed to be taken seriously, as “...a single criminal act could be a symptom of sex psychopathy and justified long term commitment” (D’Emilio et al., 1988:81).

The legislation projected the notion that offenders must be observed to determine their potential risk to other members of society and, if determined to be perverts, would be indeterminately committed to an institution for rehabilitation. A ban on indecent literature ensued, and offenders could also be subject to chemical castration and

sterilization. The “Sex Bureaux,” what would ultimately become the structure of the laws protecting the public against sex offenders today, were lists instituted in Chicago and New York to keep track of those who committed lewd acts against minors. The five states that enacted this legislation employed two physicians who would examine an individual during court proceedings and rate their level of risks. The guidelines for assessing sanity were stricter following the example of Albert Fish, who had been determined to be legally sane and released from custody before the murder of Grace Budd, after committing just minor sexual offenses and theft (Jenkins, 1998).

Police were under increased pressure to highlight the effectiveness of these new laws on controlling deviance and protecting the public. As a result, in many areas the police employed what were called round-ups or large-scale raids where masses of individuals were taken in as sexual deviants. Under public pressure, discretion on the part of control agents was disregarded in order to ensure the common good. The arrest rates per 100,000 inhabitants rose from 6.0 to 11.2 for rape and from 24.9 to 48.1 for “other sexual offenses” between the years of 1935 and 1956, with the sharpest increase occurring between 1936 and 1937 (Freedman, 1987). Most offenders placed under arrest during these round-ups and throughout the era of the first sex crime panic were almost always taken to trial, instead of given the typical plea bargain, and given the harshest of penalties that often involved indeterminate commitment. For example, after passing the Sexual Psychopath Statutes the state of Michigan saw an increase in state prison commitments from the average of between 6 and 10 percent to 12.4 in a single year. Unfortunately, the offenders who were rounded up were most often minor delinquents charged with such offenses as “impairing morals,” and the laws rarely succeeded in

controlling the truly harmful deviant population as they were designed without an understanding of who and what was to be targeted. When a society is led by a belief that a crime is more prevalent than it truly is, social control agents are responsible for projecting a number that matches what the concerned public feels is comparable to the amount of crime occurring. Anything less may invite criticism on the part of law enforcement for an inability to do their job. There ends up being a significant amount of external pressure to produce high numbers in order for the public to feel safe and for, politicians to feel that they made the right decision signing the bill for legislation amendment, as well as to satiate advocacy groups.

What these large-scale arrests succeeded in doing was confirming the fear that sexual offenders were a large population scattered in every area of society. Further, it was thought that the stricter legislation was effectively identifying the offenders and ultimately stifling the threat. Any new instance of a savage and sensational sex crime brought support for further tightening of legislation and increased animosity toward the ever-widening category of those deemed sexual perverts and psychopaths. The medical literature and psychiatric research was still in its infancy, and the results presented to the public were highly skewed, making it impossible to identify the true nature of the problem, and, in effect, legislation was not targeting the issue. Instead, those that were of a high-risk category of offenders fell outside the radar of the new laws as the control agents enforcing were too focused on producing high numbers.

While the majority of the population were failing to understand who constituted a sexual psychopath they were also failing to understand or care about the consequences of the statutes. However, in 1938, the U.S. Supreme Court declared in the *Frontczak* case

that the Sexual Psychopath Laws were unconstitutional. The court determined that the hearing by court hired psychiatrists "...lacked the essential protections of a jury trial and violated the double jeopardy principle" (D'Emilio et al., 1988:81). Offenders were not granted a fair assessment of risk, as the doctors who were assigning labels were doing so under increased public pressure to rid society of any potential risk posed by individuals, and this ultimately resulted in erring on the side of caution for many. Not surprisingly, many states continued to employ the statutes through loopholes without much protest as any restrictions of rights of the offenders was a minor consequence far overshadowed by the benefits to the general public.

After 1940, the hysteria surrounding sex crimes and sexual psychopaths died down. The era of the Great Depression was ebbing, and the changing nature of the social fabric was balancing out. The medical and psychological research had increased overall knowledge of sexuality and sexual deviance and hence a good understanding of legitimate boundaries. The start of World War II created a diversion from domestic troubles and focused attention overseas. The entrance into the war created a social solidarity among the diverse members of the United States as everyone pulled together for a single cause. Men of all races and class divides entered the war, so many of the women went to work in the factories while the men were in combat. While, at the time, the social fabric was relatively balanced and there appeared to be little threat to stability, the changing nature of gender roles due to the majority of the able-bodied male population being overseas would result in the second sex crime panic once the men returned from war.

The second panic is relatively similar in nature to the first panic, with an overall theme consisting of threatened masculinity. The inner aggression of males thought to invite psychopathic tendencies in an individual was pushed to the forefront of the personalities as a necessary trait to go to war. Females' hyper-sexed personality was needed to go to work in the factories. The soldiers returning home found that their job positions had been filled by women who were reluctant to leave them. The threat to masculinity at a time when males' aggression was a dominant part of their personality created a concern that sexual victimization would become a major problem to post-war society. Women in the workplace would increase opportunities for sexually motivated offenses as they were a part of not only the public realm but also a male dominated arena. Further, children would be left unattended, increasing the number of potential victims for pedophiles. Although society could have embraced the changing roles of the genders and found a balanced medium, the onset of the Cold War created an outright rejection of non-conformity, and thus there was an imminent fear that failure to return to prewar society would unravel the social fabric.

Media frenzy at the time is represented by many articles in Collier's Magazine claiming that, "the rapist, the sexual psychopath, the defiler of children had virtually gone out of control and rape has increased 200 percent in the last 20 years, the most phenomenal increase of any major category of crime" (Jenkins, 1998:87). Furthermore, "the hoodlum rapist lurks in the foliage of a dark street waiting for a women to walk home from the bus stop" (1998:88). As with most reports of dramatic statistics, the report of a vast dark figure of unreported crimes led to further speculation that the problem was

even more out of control than what was mentioned. According to journalist Howard Whitman,

Children in alarming numbers have been the victims of molesters, exhibitionists, perverts and pedophiles. The sex hoodlum, hanging around schools with comic books and bubble gum to lure his victim has imbued parents with a stark new fear. The nation faces the grotesque baffling problem of pedophilias that are roaming about abusing, molesting, luring and perhaps one day killing. ...as long as there is rampant day to day molestation and abuse of children, some of them are going to be killed (1998:87).

The picture that the sexual psychopath and dangerous pedophile were present everywhere, presenting a threat day and night, was successfully painted by media stories. J. Edgar Hoover's article, *How Safe is Your Daughter?* brought further support from politicians to start formalizing laws to control the plague. The 1947 sensational "Black Dahlia" murder supported the idea that the threat was true and worth panicking about. Sexual Psychopath laws were revised, and 21 states, including the District of Columbia, adopted the laws into legislation. Once again, like the early sexual panic, what followed was an increase in arrests of those who were not of the most threatening population of sexual offenders but those minor offenders who served the purpose of creating an appearance that social control agents were successful in reducing the threat of the seemingly out-of-control problem.

In both sex crime panics, the fear escalated almost as quickly as legislation was passed. The public blindly agreed with the media, and there was little to no debate or questioning with regards to the validity of the assumptions that the threat was everywhere. The laws were passed as a result of the panic fueled by problems disassociated with the specific issue of sexual offending and thus were very broad and vague, allowing for discriminatory use. The result was a seeking out of personalities, those possessing physical characteristics identified by mass mediated images of people thought to be a threat to morality. All sexual offenders were given the same punishments and, regardless of offense, experienced the same stigmatization. Because the laws were not designed around the actual threat and problem of sexual offending, the deviance was not successfully addressed or controlled.

## CHAPTER IV

### THE CONTEMPORARY CRISIS IN SEXUALITY AND SEXUAL OFFENDERS

The United States has been in its third crisis over sexuality and sexual offending for almost twenty years. This era has been uncharacteristically long in retrospect and has reached new levels with regard to the severity of punishment and the overwhelming stigmatization of those we deem sexual offenders, a by-product of the 1970s and 1980s “tough on crime” campaign that changed the nature of how the U.S. views the appropriate ways to punish offending. The media have expanded into 24-hour news stations that have increased the ability to receive view local stories nationally at all times of the day and night.

The legislation this nation uses to control the problem of sexual deviance has been in place since the mid-nineties. In one study, Quinn, Forsyth, and Mullin-Quinn (2004) show that the media interest in sexual offending has been increasing over the last two decades even though this type of offending has remained stable. They also found that the laws have done little if anything to combat the problem. Not surprisingly, the study also demonstrated that Americans do not have an adequate understanding of what sexual offenders are nor what causes their behavior. The media focus on extreme cases of sexual violence, often airing stories of an innocent victim (child) and a powerful offender (older male stranger) such as the recent case, investigation, and trial regarding Jessica Lunsford, who was brutally murdered by John Cooley, a previously convicted sex offender (Candiotti & Courson, 2005, March 21). While these stories are true and warrant an investigation and punishment for the offender, they cannot be generalized to represent

sexual violence in society. Coupled with key political figures and victim advocate groups, this has created a distorted view of most sexual offenders as violent sexual predators. In reality, sexual predators are less common than all other types of sexual offenders. At the same time, community notification has been applied in all fifty states, serving to reinforce this false belief, exacerbating the consensus of the commonality of stranger pedophilia. In turn, these laws have created a false sense of security and misconception of stranger danger. Further, there is a misconception over recidivism in that most believe that sex offenders are serial offenders and cannot control urges to re-offend, even though the Center for Sex Offender Management indicates that recidivism for sexual offenses is lower than other types of crimes (U.S. Department of Justice, 2001).

Joel Best (1999) outlines a good example of how mutated statistics come into play in the media scare over sexual violence in his book *Random Violence*. At the start of the Catholic Church pedophilia scandal, a psychologist published a report, based on a limited sample, claiming that 6% of America's Roman Catholic priest population was, at some point in their life, sexually preoccupied with minors. While it was only an educated guess as the psychologist had surveyed a limited sample based on those who had sought psychological treatment, the statistic was repeated over and over in the media because it was the only statistic available. While the guess was based on attraction to minors, it was indicated that this was the percentage of the priest population that had sexual contacts with minors. Further, while the word *minor* came to mean young children, the report had meant to indicate minors as adolescents, as about two times as many priests are attracted to adolescents than to pre-adolescent children.

Seventy-two percent of parents say they are afraid that their child will be kidnapped by a stranger pedophile (Stickler, Salter, Broughton, & Alario, 1991). However, a study done by Groth, Burgess, Birnbaum, and Gary (1978) showed that in 71% of abduction/molestation cases the offender and victim knew each other, and 14% of the cases involved members of the child's immediate family. Further, a study done by the National Center for Missing and Exploited Children, in conjunction with the University of Pennsylvania School of Nursing (1990), showed that in 58% of cases of abduction, the abductor was an acquaintance of the victim. Prevailing social ideas, norms, and evident truths only heighten the risk for sexual victimization. An HBO special, "How to Raise a Street Smart Child" (1987), illustrates that society's notion of a stranger is intimately tied with how individuals view certain physical cues as threats through sensitization. When the host, Daniel Travanti, asked elementary school children their definition of a stranger, some of their answers were as follows:

- A stranger sometimes wears a hat...sometimes a black or brown jacket and is a guy with a beard...some hair and a moustache and some glasses.
- A stranger looks mean and ugly...a creep.
- Big...bigger than you, bigger than most people.

While policymakers and criminal justice officials view societal fears and understanding about crime as integral in the formation of policy, community responses based on these views hinder effective protection strategies and interventions that could reduce the risk posed to the general public. Misconceptions due to media reports and skewed statistics can further endanger the public as it puts focus on the danger of strangers.

To further exacerbate the problem, Frank Furedi (2001) has found that this misconception of pedophilia has led to a distrust of adult motives. Society in the latter part of the 20<sup>th</sup> century into the 21<sup>st</sup> has become estranged from its children. One-on-one contact is sometimes forbidden in professions such as elementary education and is feared in other professions such as daycare and in institutions such as the church. The consequences are far-reaching. Besides the social unraveling of the community and an emotional gap between generations, children are now more than ever perceiving the world they live in to be dangerous. Further, professions that deal with small children are being re-feminized under the fear of false accusations of child abuse. As the world is getting more and more threatening, there are fewer adult support systems outside of the family that they can turn to in order for guidance and security (Mary DeYoung, 1997).

Overall, Best (1999) warns that the changing nature of sexual abuse, deviant boundaries, acceptability of victimization, and sophisticated tools must be taken into account when viewing statistics of sexual abuse. For example, in 1963 there were 150,000 reported cases of child abuse in contrast to 1995, where there were 3 million. There wasn't a significant increase in child abuse during this time but a change in how child abuse was defined, dealt with, and recognized. Statistics were not challenged and are rarely challenged with regards to sex offenders because the claim is often made that even one child is too many in the hands of offenders, who are easy targets to attack and dislike. What is not taken into account is how much harm is being done to others, innocent and guilty, by skewed statistics and ineffective policies.

The hysteria over the original offense and potential for later recidivism has led to the focus being placed less on finding effective means for combating the issue and more

on immediate and direct action on all offenders and those who pose a potential threat. This results in an escalation of response wherein, as efforts are employed but offenses keep occurring, legislation is amended and more people and types of actions fall under the scope of control. The problem is that as more types of actions warrant the attention of sexual offender legislation, more offenses keep occurring and a cycle of stricter legislative efforts is seemingly unbreakable.

### **Explosive Situations: The Representation of the Pedophilic Threat and the Legal Responses**

Five separate criminal incidences between 1987 and 1996 have been related to or associated with the crisis in sexuality and are part and parcel of the latest overreaction to the alleged threat of stranger-based sexual offenses. The stories involving these incidences are very similar in nature, tragic and horrific, an innocent victim and psychopathic stranger committing senseless violence, highly charged media coverage, and victim advocacy. The first occurrence and the second story to bring about legislation was that of eleven year-old Jacob Wetterling, who was abducted by a stranger while riding his bike with friends. He has never been found, and the abduction remains a mystery. When briefed by police, Jacob's parents were told that the offender was most likely a previously convicted sex offender who had been unsuccessfully attempting to abduct for the last few months until finally succeeding with their son. Jacob's mother devoted the next seven years to pushing for legislation that would mandate states to set up a database for such high risk offenders as it is believed that if one had existed in 1987, the man who abducted her child would have come under notice for his failed attempts long before crossing paths with Jacob (U.S. Department of Justice, 1998). In 1994, the

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registry Act was passed, which required states to establish stringent registration programs for sex offenders from which information was used solely under the discretion of law enforcement (Legal Information Institute, 2005).

Two years after the abduction of the Wetterling boy and five years before the Jacob Wetterling Act, Washington state had enacted its own state-based legislation to track and control offenders after convicted sex offender Earl Shriener sexually molested and brutally attacked a seven-year-old boy months after his release from prison. While the legislation did not originally catch on at the federal level, the structure of the laws in Washington became a template for, and forerunning example of, the legislation put in place by federal agencies in the following years. The Community Protection Act, as it was called, was similar in nature to the Sexual Psychopath Laws of the first and second crime panics as persons convicted of a sexual offense were often civilly committed following incarceration if they met the criteria under the Sexually Violent Predator (SVP) Statute. Although “Sex Bureaux” had surfaced in a few major cities in the past, the state enacted the first Sex Offender Registry (SOR) long before the passing of the Federal Jacob Wetterling Act. Washington also enacted a type of community notification to inform members of certain offenders’ presence in the area. A few states followed lead, passing their own laws named after child victims such as Indiana’s “Zachary’s Law.”

New Jersey’s “Megan’s Law,” passed only 89 days after seven-year-old Megan Kanka was sexually molested and brutally murdered by a neighbor, was adopted to Federal legislation in 1996 by efforts from the Kankas and the Klaases to mandate that all states disseminate information collected under the SOR to the public in some form of

community notification (Petrunik, 2003). Polly Klaas, like Megan, had been abducted in the safety of her neighborhood and later found sexually assaulted and murdered.

Previously convicted sex offenders who were not known to the victims or families kidnapped both girls, and both stories received extensive media coverage. Polly's parents have also set up the Klaas Kids Foundation, a victim advocacy group that educates the public about the laws in each state (Sample and Bray, 2003).

. Pamela Lyncher's story, while different than the previously mentioned victimizations in that she was an adult at the time of her victimization, is similar in that it received substantial media coverage, involved a previously convicted sex-offender, and resulted in a law that strengthened legislative control over the specific category of offender. A real estate agent, Pam was showing a house to a man who she did not realize was a sex offender when he attempted to rape her. Midway through, Lyncher's husband intercepted the act and saved her life. A few years later, Pamela and her children were victims in the TWA 800 crash, and the Pam Lyncher Sexual Offender Tracking and Identification Act of 1996, named in her honor, added to the first two laws by establishing a national computer database or National Sex Offender Registry (NSOR) to track offenders who are registered for offenses against a victim who is a minor, offenses that are violent in nature, and offenders deemed sexually violent predators. Predators are differentiated from other sexual offenders by being defined as offenders who seek out their victims much as animal predators hunt their prey. Those most often accused of being sexual predators are those who commit acts of rape and child sexual abuse, and those who are deemed predators can be held in incarceration after their sentence has expired if they are thought to pose a risk to the public (U.S. Department of Justice, 1998).

This categorization is very similar to the SVP statutes of the earlier panics, the difference being that previously violent predators were committed if thought to be a threat instead of facing continuing incarceration in prison.

What all of these stories have in common is a crisis over the controlling and confinement of individuals deemed sexual offenders. While the first two panics focused on identifying who and what constituted a sex offender, the present day panic is more concerned with how to control the population whose deviance the United States was never able to effectively declare victory over. When the war was lost in both instances, the sex crime panics of 1937 and 1947, the focus was placed less on identifying the causes of offending and more on how to control the population. These explosive situations that were responsible for the federal legislation in place today show in every instance a victim who was not only helpless, innocent, and attacked by a stranger but also attacked or hypothetically attacked (as Jacob's abduction is still a mystery) by individuals who had been previously convicted of a sex crime.

The current condition then cannot be classified as a sexual crime panic but rather a confinement panic, a crisis, and concern over the state and effectiveness of the criminal justice system. While there is still an over-emphasis on identifying and encompassing all acts of sexual violence, there is also a steady focus on implementing legislation that seeks to ensure the control and confinement of offenders as well as the safety of the public. As legislation is being passed at seemingly lightning speed at both the federal and state level, it is impossible to include all the laws with regards to sexual offending. This poses two problems. First, as the topic of sexual offending stays true to moral panics in that any criticism toward the legislation is frowned upon, what little evaluation there is into the

effectiveness of these laws has no way of keeping up with the rate of implementation and many if not most of the laws are being applied without determining their effectiveness. Second, it would be unrealistic, for the purposes of this thesis, to include all the laws in the discussion of the current-day panic. In the following paragraphs, the state of Michigan's legislation will be outlined because the author lives in the state and as Michigan is usually a pioneer of implementing laws with regards to sexual offending.

### **The State of Michigan**

Michigan has historically been the forerunner of implementing new legislation and amending legislation with regard to sexual offenders and provides an important example of how the definition of offenders expands and requirements strengthen. The originally implemented legislation's offenses as of October 1, 1995, were updated in September of 1999 and continue to expand as new cases emerge. While offenses that require registration continue to be added, the grouping of these offenses into one type of charge, Criminal Sexual Conduct, results in a broad application and vague confusion as to the types of acts that warrant registration and who can be deemed a sexual offender.

Criminal Sexual Conduct (CSC) was first established under the Criminal Sexual Conduct Act of 1974, "to codify, consolidate, define, and prescribe punishment for a number of sexually assaultive crimes under one heading" (Michigan Judicial Institute, 2002:25). The purpose of this act was to group many types of sexually deviant conduct into six criminal offenses with four varying degrees:

CSC 1<sup>st</sup> Degree: A Life Offense Felony

CSC 2<sup>nd</sup> Degree: A 15-year Felony

CSC 3<sup>rd</sup> Degree: A 15-year Felony

CSC 4<sup>th</sup> Degree: A 2-year, \$500.00 fine, misdemeanor

Assault with intent to commit a CSC involving penetration: A 10-year Felony

Assault with intent to commit a CSC 2<sup>nd</sup> degree: A 5-year Felony

There are two types or natures of CSC offenses:

Sexual Penetration that involves:

sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion however slight of any part of a person's body or any object into the genital or anal openings of another person's body but emission of semen is not required (2002:27).

Sexual Contact that involves:

intentional touching of the victim's or actors intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i). Revenge

(ii). To inflict humiliation

(iii). Out of anger

(2002:27)

“Penetration” offenses include CSC 1<sup>st</sup> degree, CSC 3<sup>rd</sup> degree, and assault with intent to commit CSC involving penetration while, “contact” offenses include CSC 2<sup>nd</sup> degree, CSC 4<sup>th</sup> degree, and assault with intent to commit CSC 2<sup>nd</sup> degree. While the initial implementation of the CSC Act was to ensure inclusion of sex crimes that were previously unrecognized and unprosecuted (such as spousal rape), the good intentions of the act are severely overshadowed by the vast misunderstanding among the public it creates.

While criminal justice and court officials may understand which sex crimes fall under each of the varying degrees, the public has no such understanding. The CSC statutes were originally designed for the use of control agents and court officials and worked through the implementation of the sex offender registry. However, with the enactment of Megan’s Law, which requires all states to inform the public of sexual offenders, the CSC statute falls short of effectively communicating to the public the nature of sexual offending from case to case. The pragmatic viewpoint most of the public holds enables the CSC statute to remain in effect, as it provides a neat and organized way to categorize offenders, which on the surface, may seem to provide adequate understanding with little confusion. On the other hand, it may be that society tends to view all those registered to be one kind of offender, rendering the CSC classification obsolete and unimportant.

There are three types of community notification: broad community notification, notification to those at risk, and passive notification. Broad community notification delegates to Criminal Justice Officials the responsibility of informing and educating the public about sex offenders. Depending on the assessed level of risk made by these officials, the offender's information is released to the public by media, flyers, or community meetings. Notification to those at risk is similar to broad community notification but is more limited in scope. Information is essentially released to protect individuals or a population deemed vulnerable, such as schools and childcare centers. Risk assessment is performed by criminal justice officials, and whom to notify is at their discretion. Passive notification places the on citizens and community organizations responsibility of seeking out information and educating themselves. Information is collected by local law enforcement and presented in some medium such as a website, CD-Rom, or article that the public can access (U.S. Department of Justice, 2001).

All fifty states have enacted community notification and offender registration. Community notification varies but is consistently applied to inform individuals of the presence and close proximity of an offender. These laws, although more severe, also carry the same characteristics of being vague and broadly applied. They have been passed on false assumptions that all sexual offenders are sexual predator pedophiles of unredeemable qualities who lack the ability to be contributing members of society. This is apparent by advocacy groups such as Klaas Kids and Family Watchdog, which provide individuals with tips on how to protect your children. At first, states complied with the legislation and mandated DNA samples and registry information from only those deemed violent offenders. However, all fifty states have expanded the laws to include violent and

nonviolent sex offenses widening the net and expanding the umbrella of definitions for who qualifies as a person to be feared in society (Sample et al., 2003). The expansion exacerbates the problem of confinement as the more offenders the system is responsible for controlling, the harder it is to effectively control that specific population. In effect, as the definitions are updated to include more offenders on the registry, individual state laws have been expanding to include requirements beyond that of imprisonment and registration. Some examples include chemical castration, tracking tethers, and physical labeling such as wearing t-shirts or posting signs in front yards that make the person's status as a sex offender blatantly apparent.

As most states are finding new ways to ensure that the public is aware of those who are sex offenders, many are also implementing new clauses in the legislation to include more stipulations of what constitutes an offender, what offenses require registration, and what information is posted on the registry. Federal legislation requires all states to register current addresses of sex offenders and predators, maintain accurate registries, and maintain and distribute registry information to the public when necessary in some form of public notification, notification to those at risk, or passive notification. According to the U.S. Department of Justice (1997):

Community notification reflects the perception that registration alone is inadequate to protect the public against released sex offenders and that notification provides the public with a better means of protecting itself. Notification proponents believe that by informing the public about the presence of a sex offender in the community, neighbors will be able to take action to protect themselves from sex offenders by keeping

themselves-and their children-out of harms way. ...Notification is also thought to improve public safety because the public will be able to identify and report risky behaviors by sex offenders...that might escalate into criminal behavior if ignored (1-2).

All states are tied into a federally mandated, minimally sufficient requirement of what is to be listed on the registry made available to the public. Those states that do not meet the minimally sufficient requirement of public notification by providing an offender's name and (if applicable) alias, address, physical description, birth date, and listed offense are required to provide the information on offenders to the Federal Bureau of Investigation for the purposes of posting the information on the National database set up by the Pamela Lyncher Act and will lose important federal funding. Although the state of Michigan meets these minimum requirements, the legislation of the state, like so many others, almost insists that all information collected and compiled by law enforcement is forwarded to the national database.

At the Federal level, the Adam Walsh Child Protection and Safety Act, passed in 2006, expands law enforcement's ability to access information to better track sex offenders. Further, it has mandated the standardization of registry information on the national database set up by the Pam Lyncher Act, identifies failure to register as a felony crime, and mandates that all states require more frequent registration that is to be completed by the offender in person. Also, it has expanded offenders' requirements for registration to include not only the jurisdiction where they reside but also those areas they work and attend school and incorporates the use of DNA evidence and the tracking of

convicted offenders with Global Position System (GPS) technology. Sentencing requirements for mandatory minimum incarceration has increased under this legislation to 25 years for kidnapping or maiming a child and 30 years for sex with a child younger than 12 or for sexually assaulting a child between 13 and 17 years old. Further, it has widened funding to assist local law enforcement in tracking Internet sexual exploitation. Last, the Adam Walsh Act has expanded listed offenses to include registration of juveniles convicted of certain sex crimes and enables the federal government to apply this legislation retroactively (U.S. Department of Justice, 2007).

Also passed in 2006, the Dru Sjodin National Sex Offender Registry is a search engine designed to allow individuals to access any state's registry through a single website. Users can search by name, zip code, or at the county, city or town, state, or national level. Although each state differs on what and who is listed on the registry, the Adam Walsh Act will help to create more uniformity across the country.

The state of Michigan implements a passive notification system that places responsibility on the public to access information about registered sex offenders through a Public Sex Offender Registry (PSOR). The PSOR is available to anyone through the Internet, and individuals can search for offenders by name or zip code. The information listed on the PSOR include the offender's name, sex, race, date of birth, height, weight, hair and eye color, address, the citation for listed offense(s), and the title of the offense(s). When individuals access the PSOR they receive information that is relevant in identifying an offender and a listed offense; however, the listed offense does not particularly help in identifying a threat. Instead they read the charge that states something such as, "CSC 1<sup>st</sup> degree, multiple variables," that will include age only when the victim

is under the age of 13. Since the laws that keep track and control sex offenders were created based on one specific type of offender, the stranger pedophile, those that are receiving the information off the registry have already been led to believe that all those offenders listed are that type of sexual offender. The listing of the specific offense is irrelevant, as it is just legal jargon and incomprehensible.

While the Dru Sjodin Registry does include a link beside the offense to read the specific legislation explaining the details of the charge, it is hardly any clearer than the original listing of the offense. For example, the link paired to the charge of CSC 1<sup>st</sup> degree for a registered Michigan offender reads:

**750.520b Criminal sexual conduct in the first degree; felony; consecutive terms.**

Sec. 520b.

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if *any of the following circumstances exists*:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
  - (i) The actor is a member of the same household as the victim.
  - (ii) The actor is related to the victim by blood or affinity to the fourth degree.
  - (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
  - (iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.
- (c) Sexual penetration occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
  - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - (ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).
- (e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:
  - (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
  - (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
  - (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
  - (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
  - (v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.
  - (g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the

victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

(c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

*\*Italics and Boldface added*

(Legislative Council, 2006)

The purpose of including this information is to show that the legal jargon, even when more comprehensively explained, is still inadequate in providing an appropriate assessment of the crime the individual has committed.

While not all states are uniform in the way they collect, distribute, and control sex offenders, the majority of the population have universal views that registered individuals are pedophiles who are going to attack their children. While the system in the state of Michigan is perhaps least effective in protecting the public with its form of passive notification, public notification and notification to those at risk also severely fail in appropriately protecting the public and creating ease among members of its communities. There are many problems associated with implementation of the registry and notification in that first, most individuals feel their children are in more danger around a sex offender than they are themselves. While, overall, people tend to keep their distances from those registered, society has failed to establish that sex offenders victimize those of all ages.

Second, the statement regarding community notification from the U.S. Department of Justice (1997) that “the public will be able to identify and report risky behaviors by sex offenders” (2) is problematic in that any action or behavior of a known registered offender in a public place will automatically raise suspicion because those who are aware of their status are on edge and wary of the person’s actions to begin with, due to sensitization.

While it has been explained in previous sections that the foundation of knowledge individuals have to work with is created through a moral panic involving biased and misrepresentative information, the public is not at fault for their misconceptions or errors in processing and using the information on the registry. All types of community notification fail in providing appropriate services to those receiving the information on registries, in that control agents do not provide people with accurate knowledge on how to use the information to protect themselves. This would involve a comprehensive explanation about those on the registry ranging from individuals who are the image of the feared sex offender to those who have received misdemeanors, or the present day “impairing morals.” Instead, advocacy groups have picked up the responsibility of informing the public on how to protect themselves through Internet websites and workshops. Those outlets that are hosted by advocacy groups such as Klaas Kids were founded on pedophilic crimes and, hence, were designed to provide information on the protection of children. It is also important to note that control agents aren’t solely responsible either, as they are a part of the society that fails to understand sexual deviance, from the origins of boundaries to the causal path to offending. Even if notification and registry policies were put into place based on academic and

unexaggerated information about the real threat, it is not guaranteed that having this would be effective in preventing recidivism. In a 2003 study done by the Department of Justice, it was found that only 3.5% of new sex offenses are committed by registered offenders while the remaining 96.5% are committed by those who are unregistered (U.S. Department of Justice, 2003). The question of whether or not individuals can use the information presented to them on the registry may be irrelevant in light of the statistics on re-offending.

### **Consequences of the Current Panic**

The difference with regard to this panic and the two previous is that the current day panic has evolved from a crisis of the genders, economic stratification, and the inability to define sexual boundaries to a crisis of containment and the failure of the criminal justice system. In present day society in the United States, a broader acceptance of sexuality and sexual behavior has been achieved and continues to move in a more positive direction of equality for those practicing sexual acts deemed homosexual, bisexual, transgender, and outside the purpose of procreation. While the debate on abortion has gained momentum in the past couple of years, the use of contraception is highly accepted and premarital sex is viewed as commonplace.

Within this panic, however, the more broad social problems encompass gender inequality and the social reality of the crisis of the family. As a result of accepting the somewhat equal status of females in society, women make up 42.5% of the workforce, and most two-parent households indicate dual income families. The result is that more children are being placed in the hands of caretakers or are left on their own for an extended period of time in the day. While this is similar to the second panic's fear of

unattended families, blame is being put less on females and is now something that has been internalized among both male and female parents. Not being there for their children while at work and fearing the collapse of the family for not having enough time in the day has created a need to displace this self-blame onto an other, a larger threat to their children beyond that of themselves. This explains why Americans have a misrepresented notion of the real threat with regards to sexual offending and will readily accept media influence on the subject.

The 1970s “nothing works” viewpoint with regard to crime shifted the emphasis away from individualized treatment and rehabilitation by showing that the problem of crime could be resolved only through social justice (Cullen and Gendreau, 2001). As admitting structural causes of crime is neither economical nor consistent with the ideology of adversarialism in the United States, the action taken was that of a reaction to a lost war (the inability to eradicate a problem or rehabilitate offenders in order to curb recidivism): trying only to contain the problem for the sake of protecting society. As a result, the U.S. has seen increasing and more stringent legislation with regard to all crimes and especially with regard to drug-related and sex-related offenses. As fears rise about the occurrence of certain types of offenses and their prevalence, the result is an increase in penalties and means for controlling the population that is feared. Our society has gotten to the point where quick resolve by containment is the only way to solve the problem of crime. Any light shed on the ineffectiveness of laws leads politicians and concerned members of the public to believe the reason is weak legislation and not enough power on the part of social control agents such as police officers. The more fear and

panic surrounding the prevalence of certain offenses, the more strict the legislation on containment and control will become.

Today we are led to believe that stranger pedophilic victimization is at epidemic proportions and all those who are registered sex offenders fit into this category. In reality, this type of crime is rare compared to other types of child and adult sexual offenses. Looking at statistics of child sexual offending, it is clear that the panic is misdirected. Most children are sexually victimized by someone they know, such as parents and relatives, but are taught to be wary of strangers. Only about .1% of the population of children in this country are abducted and sexually molested by strangers; other types of child maltreatment, such as neglect and physical abuse, are much more prevalent but do not receive nearly as much attention and community response as stranger sexual pedophilia. In fact, federally based statistics show that of the types of child maltreatment, neglect makes up 53.5%, while sexual abuse makes up about 11.5%. Federally collected statistics from 1998 showed that 52.4% of sex offenders in state prisons were relatives, 23.5% were friends or acquaintances, 12.3% were intimates and only 3.6% were strangers to their victim (U.S. Department of Justice, 2003).

Consistent with the template of moral panics, the media has helped to skew the ideology in place. Headlines in the news have changed little since the first and second sex crime panic and still include insinuating titles that indicate the threat is everywhere. For example:

“Is there a Debra LaFave in your child’s school? ‘PREDATORS’ exposes today’s hidden epidemic of teacher-student sex.” –Whistleblower Magazine, March 26, 2006

“MySpace: Your Kids’ Danger?” –CBS Evening News, February 6, 2006

“Predators in America’s Nursing Homes: Registered Sex Offenders Residing in Nursing Homes Analysis.” –A Perfect Cause, July 2006

“To Catch a Predator: Enemies in Your Own Home.” –Dateline NBC

Since the simmering of the Catholic Church scandal, increasing media attention has focused over the years on the cases of teachers who sexually violate students in the classroom. While these types of victimizations remain rare, the explosive media coverage tends to suggest that each child is at substantial risk when entering a classroom. Attention has also been focused in recent years on the threat posed on children by the Internet, sensationally portraying the threat as a permeation of the ultimate safety zone, home. Wired magazine ran a report of a trial software program that scanned members on MySpace and compared the names to the SOR. Out of three trials and thousands of names, the software picked up on about 700 name matches (admitting that a manual check of the results picked up thousands of false positives), and, out of those, only one member who seemed to be engaging in any suspicious activity (Poulsen, 2006, October 20). Overall, these media stories and countless others portray to the public that nowhere is safe against the overwhelming population of sexual predators.

This fear of an unsafe world has exacerbated the problems associated with the family institution. As discussed in the previous section, the study done by Frank Furedi (2001) showed that while parents have been afraid of negative consequences that their absence has on the well-being and growth of their children, the fear associated with sexual predators has left many children viewing their daily life as riddled with danger at every turn. As youth try to make sense of their world and grow to learn about life, they are finding it more difficult to find positive role models and healthy relationships with

adults, as many professions have limited the emotional and physical contact adults can have with kids with whom they work. Not only are children deprived of more time with parents, they are also deprived of extra-familial relationships with mentors and role models. While it may be argued that the lack of quantity of time that parents have with their children will often lead to more quality time spent as a family and the role of parenting guidelines has improved, it seems that overall, society feels that they are failing in the realm of this institution. The result is a potential breakdown of not only the family but also that of the community (Glassner, 1999).

While children seem unable to find positive connections with others, the legislation controlling offenders leads to prolonged exposure to negative relationships. As is shown through the analysis of the moral panics surrounding sex offenders, they are labeled as one of the worst threats to the moral and social fabric and are publicly and blatantly stigmatized by the legislation that controls them. As a result, many of those who offend go underground to avoid vigilant attacks from community members, which often requires family member protection from prosecution. As most offenders' victims are relatives, recognition of the victimization is often ignored or kept secret in order to protect the offender from the harsh punishments associated with his or her offense. Further, because the person is required to register a home address on a list that is viewed by the surrounding community, families are often protecting themselves from the negative publicity of airing their dirty laundry. The stigmatization by the public makes it impossible for offenders to reintegrate back into society. Viewpoints such as those of "Not In My BackYard," or NIMBY, create difficulties for offenders to find adequate housing and they must move back into the household they occupied before incarceration,

many times the same residence as their victim (Freeman-Long and Blanchard, 1998).

This particular consequence and those in the following paragraphs leads to a larger dark figure of crime and, in effect, while trying to increase the monitoring of sex offenders legislation is making it more difficult to track and identify offenders.

To further elaborate on the effects of labeling, Richard Tewksbury (2005) studied the registered offender population in Kentucky, and results indicate that offenders are frequently unable to find employment or housing, lose support systems in the community such as friends and family, and are often on the receiving end of slander, property vandalization, and violent outbursts. The daily life of the registered offender creates feelings of isolation, depression, and a loss of power, feelings that led to offending in the first place. The realization of being stigmatized for the rest of their life also instilled a lack of motivation to change offending behavior. Tewksbury concluded that the registry laws actually created situations for re-offending instead of the intended goal of reducing recidivism. Zevitz and Farkas (2000) interviewed sex offenders shortly after their release from prison and showed that all but one interviewee felt that the registry laws hindered their ability to reintegrate into the community. Instead, being registered had left them with feelings of isolation, shame, and humiliation, reportedly feelings they had experienced that led them to offend. In a similar study, Levenson and Cotter (2005a) also concluded that the registry and community notification laws facilitated an environment and emotions conducive to offending and claim that a re-examination into these laws needs to take into account the goal of a good balance between the public's right to know and offender reintegration. As stated by Meghan Stromberg (2007), "Those who treat sex offenders say that situation creates more problems: Without support, stable housing, jobs,

and access to treatment, sex offenders-and all criminals-are statistically more likely to commit new crimes. They are also more likely to go underground, making it impossible to monitor them” (22).

The result of the physical isolation caused by the laws making it almost impossible for offenders to find jobs and a place to live has left many registered individuals homeless. Registries all over the country have address entries such as “whereabouts unknown” or others indicating some bridge off some exit of the highway. If these offenders are so dangerous that they need close monitoring and an awareness of their location, then the registry is the direct result of its own failure in that homeless sex offenders are nearly impossible to keep track of. In addition, the new residency restriction laws outlawing offenders from living anywhere from 500 to 2000 feet from schools, community centers, bus stops, and anywhere where a large number of children congregate makes it even harder for offenders to find housing. A stark example is that of California’s new 2000 foot buffer in the cities of Los Angeles and San Francisco that have made it impossible to live pretty much anywhere within city limits (Stromberg, 2007).

In reviewing the residency restriction laws, Levinson and Cotter (2005b) show their ineffectiveness beyond that of preventing reintegration. First, many of the offenders subject to these laws did not victimize children. Secondly, offenders, especially those who did victimize children, may have lived with the victim and because of such laws are forced to move back in with the family. The last point is best illustrated by the following answers to the self-report surveys: “You can live next door to a minor but not a school”

and “You don’t want me to live near a school where kids are when I’m at work. The way it is now, when I get home from work, they’re home, too-right next door” (175).

Keeping offenders away from a place where children are known to congregate leaves out an important part of an offender living within a community: they will most likely be living in a community where children live. Not only that, but the places they are living next door to are the places where children spend the largest portion of their day.

Similarly, many of the offenders indicated that if they were to offend again, they would not choose a victim within their own neighborhood or at a school nearby, and it appears that the safety zones “serve no purpose but to give some people the illusion of safety” (174).

In looking at the ineffectiveness of these laws, it is apparent that the legislation is being passed on misguided assumptions and misrepresented information. An article by Brian Dickerson in the August 14, 2006, edition of the Detroit Free Press illustrates the illogical reasoning behind the passing of residency restriction laws in the state of Michigan. Local politicians ride on the panic of the public and their anxiety over the potential threat of pedophilia to gain popularity among voters and agree to swiftly pass legislation without a thought to effectiveness or examination into the sensibility of the proposal. When interviewing the sponsor of the restriction zones for the city of Warren, Dickerson concluded that she knew little about the 39,000 people on the registry or even how many were on the registry. Further, she used the terms “child predator” and “registered offender” as if they were one and the same and concluded that even though the laws would affect those that did not victimize children, deterring one predator is worth the consequences it may have on others.

## Future Implications

As is shown in the last section, the legislation that has been passed to track and control sex offenders to the betterment of society has actually exacerbated the same problems the laws are trying to solve. The war against sex offenders has failed and is continuing to fail. However, the media, politicians, and moral entrepreneurs are still going strong on a forward path toward more stringent laws, and the current panic is in no way on the decline. As of 2006 there were 566,000 registered offenders in the United States and, according to the National Conference of State Legislatures (NCSL), “New means to supervise and protect the public from sex offenders were top anti-crime priorities of state legislatures in 2005” (U.S. Department of Justice, 2007:3). In 2005 alone, 100 new sex offender laws were passed at the state level and include such methods of control as Global Positioning Systems or GPS tracking, increased penalties for failure to register, mandatory sentencing for certain offenses, additional offenses added to lists of registerable offenses, more information on registries made available to the public such as DNA, and lifetime registration.

The obvious result of the current panic as outlined previously is the passage of stricter will not only encompass new offenders but will also make it increasingly more difficult for current offenders to stay out of trouble. While on the surface this may appear to be the goal, the trouble these offenders are facing is, for example, not having adequate transportation to keep updating their registry information in person, especially those facing life registration. Failure to register means re-incarceration, and many offenders may keep cycling in and out of prison even though they have not recidivated by committing a sexually related offense. Further, GPS tracking initiated by the Adam

Walsh act and already passed in California may mean hefty fees for the state and offenders. In the instance of California, which passed a bill requiring many sex offenders to be monitored by GPS for life, the state will have to fork out between \$80,000 and \$160,000 a day to keep track of all the sex offenders with tracking systems (Dottinga, 2006, November 9). Being monitored constantly has many problems of its own such as false alarms, faulty equipment, and an almost unrealistic standard of good behavior that can cause many offenders to return to prison unjustly. The result: higher rates of recidivism among a population that is feared because of their potential recidivism.

Current legislation is also moving to include non-sexual offenses that have been identified based on statistics as possible gateway offenses. Comparable to those behaviors deemed “suspicious,” in the future those who burglarize or rob could be included on state-based or national registries because studies have indicated that those who sexually offend have had prior convictions of these two crimes (Sample et al., 2003). Sample and Bray’s (2003) study also highlights what has been concluded by the Center for Sex Offender Management: that sex offenders have lower rates of recidivism than other types of offenders. The majority of sex offenders, or about 93%, are not arrested for another sex crime. However, legislation is still moving forward in a more strict direction, widening the umbrella to encompass more and more offenders while also giving law enforcement more power and discretion that is consistent with characterizations of moral panics and the reaction of societies to skewed information and misunderstandings of the problem.

While more and more people are going to come under the control of legislation and will be mandated to register for life, law enforcement will ultimately become

overwhelmed by the requirements of enforcing the legislation and maintaining the databases. Prior to amendments to the original federal legislation, states had little funding to implement systems of registration but would face federal funding cuts if they failed to implement “minimally sufficient” programs. With additions such as residency restriction zones, mandatory life registration, GPS systems, and more frequent in-person registration, jurisdictions’ resources will be beyond tapped out and agencies will be unable to maintain accurate information on the registries or handle the flow of new offenders into the system. The potential result is cut funding from education, health care, and other important social services for the sake of criminal justice. What many fail to comprehend is that cuts of this type harm the public and can lead to increased crime, poverty, and disorganized areas that foster criminality and victimization. Further, many of these future costs will be added to the offenders’ court costs and fines, fees that many already have trouble paying for. In that GPS tracking costs between \$4 and \$5 a day, an offender could likely see an annual cost of between \$1,460 and \$1,825 for monitoring alone (Dotinga, 2006, November 9). As sexual offenders have trouble finding jobs and adequate housing, this is likely to further exacerbate the problem of homelessness among sex offenders.

This is not to say that everyone is suffering in costs of controlling this population. Many are finding the increased fear over sexual offending and measures of control very profitable. Companies such as Pro Tech, which creates tethers for GPS monitoring, find an increase in the demand for their product after such legislation passes. In California, instead of providing 10,000 bracelets, the company will now need to produce around 30,000. Websites such as Family Watchdog are providing background checks starting at

\$39.95 and instant criminal checks for \$19.95. Further they offer services such as text messages when new offenders register in the area and cell phone mapping systems through such sponsors as T-Mobile (Family Watchdog retrieved August 25, 2007). Further, media outlets are finding ways to profit off of the continuing infatuation of its viewers on sexual offenders such as *Dateline NBC's* consistent running of "To Catch A Predator." The show employs the organization Perverted Justice to run a sting operation luring men through the use of chat rooms on the Internet to meet in person someone whom they believe to be an underage female, only to step into a house with NBC's hidden cameras and the host of the show. Outside, local law enforcement waits to arrest the individual after the host confronts the men in the kitchen of the home, a confrontation that often follows after an insistence from the young female posed in the house that the male remove his clothing. The show has been well received and has captured high ratings and many viewers.

While surfaced with many good intentions, NBC has reportedly been paying a consultants fee of more than \$100,000 to Perverted Justice to find Internet predators for the shows, a clear conflict of interest (Farhi, 2006, April 9). Further, the suspicious firing of Marsha Bartel, in charge of ensuring compliance of NBC policies and guidelines and journalistic ethical standards, after twenty-one years of employment at NBC for voicing her findings that *To Catch a Predator* seriously violated numerous policy and ethical guidelines, indicates a "profit over justice" motive of the show. In the court docket (*Bartel v. NBC Universal, INC*, 2007) it is indicated that *Dateline* has "become very important to its (NBC's) profit margin," and that *To Catch a Predator*, "seriously violates many of NBC's own policies and guidelines as well as numerous journalistic ethical

standards” (3-4). Among the many violations listed (going from letter a to r), some of the more serious violations include:

- Contrary to NBC Policies and Guidelines, NBC unethically pays Perverted Justice to troll for and lure targets into its sting thereby giving it a financial incentive to lie to and trick targets of its sting.
- NBC unethically provides local law enforcement with video equipment and video tapes that is then used for arrest and prosecution of individuals invited to the *Dateline* sting house. In return for this favor, NBC receives dramatically staged arrest scenarios and video taped police interrogations to capture audience attention, increase ratings and ultimately revenues for NBC.
- NBC unethically pays or indirectly reimburses law enforcement officials to participate in the Predator stings in order to enhance and intensify the dramatic effect of the show.
- In order to preserve the pretext and image of proper and independent law enforcement, NBC unethically covers up the fact that law enforcement officials act improperly such as goofing off by waiving rubber chickens in the faces of sting targets while forcing them to the ground and handcuffing them.
- Perverted Justice does not provide complete transcripts from its trolling operations to NBC, making it impossible for Ms. Bartel to fulfil [sic] her contractual duties under NBC Policies and Guidelines.
- Contrary to NBC’s Policies and Guidelines, *Dateline* cannot independently verify the accuracy of Perverted Justice transcripts.

- Perverted Justice’s agents, acting as children, sometimes beg individuals to come to the sting locations even after the targets of the sting initially decide not to come. Transcripts of these phone conversations are neither recorded or are made available to the public, leaving viewers with incomplete and false impressions.
- Contrary to NBC News Policies and Guidelines, Dateline correspondent, Chris Hansen, knowingly and falsely claimed “at any given time, 50,000 predators were on the internet prowling for children” even though a transcript of a video taped interview with his source, a former FBI agent, contradicted Hansen’s claim. Further, contrary to NBC News Policies and Guidelines, the erroneous note was attributed to only one source.

(4-7)

What this show has succeeded in doing, along with those individuals associated with the show through employment (Perverted Justice and Law enforcement officials), is make a profit off of the exacerbated fears of the public and, in effect, increase the confidence in individuals that their fears are justified. Sexual offenders already fearing the vigilant attacks from community members may now need to fear the vigilantism produced by those seeking a profit from their exploitation. Further, the practices employed by Perverted Justice invoke questions as to whether the men being lured to the house are really sexual predators and whether those involved with the show employ unjust practices of implementing justice.

In that many of the sex offender laws are not evaluated for effectiveness and upon light of ineffectiveness become more stringent, and therefore, more costly and time-

consuming, there will most likely be fewer evaluations into the laws. Further, the Adam Walsh Act may render Public Notification and Notification to Those at Risk obsolete in light of the federal mandated uniformity in registry procedures. While passive notification has not been evaluated and the other two have only been evaluated a handful of times, the notification by means of public and those at risk are the only types of notification bridging the public with control agents that provides interaction and somewhat of an availability of law enforcement to the public should questions or concerns arise.

As the concerned public and members of the Iron Quadrangle continue to care less about these offenders and view them more and more as monsters, the serious violations of the rights of these individuals will continue. Many of the sex offender laws are being applied retroactively, a clear violation of ex post facto, and the continuing publicity and created assumptions about those accused of sexual offending makes it increasingly more difficult for defendants to exercise their right to due process. In 2002, a Michigan judge declared the sex offender registry unconstitutional following a similar case in Connecticut that challenged the violation of due process with regards to determining an offender's threat to the public and the offender's inability to challenge the claim (Ashenfelter, 2002, June 4). The Connecticut case, *Connecticut Dept. of Public Safety v. Doe (2003)*, upheld the constitutionality of the registry, and even though the state of Michigan case found the list unconstitutional, the state later recanted and reinstated the list on grounds that it did not in fact, violate due process. The U.S. Supreme Court has continued to uphold the constitutionality of the sex offender laws such as in *Smith v. Doe (2003)* that concluded the laws did not violate ex post facto after an Alaska

ruling of a violation in that the laws are civil in nature and not punishment. With the passing of the Adam Walsh Act of 2006 and similar state legislation, the problems of due process become irrelevant as sexual offenders, regardless of level of offense, are required to register; and until society views registration and other related requirements as punishments instead of civil laws, the constitutionality of the statutes will be upheld and rights of offenders will continue to be scaled back.

## CHAPTER 5:

### CONCLUSION

As is seen from the discussion of the history of sexuality and the reoccurring sex crime panics, sexual behavior is something that is misunderstood in American society. While numerous attempts have been made to understand the nature of human sexuality and the appropriate boundaries between acceptable and unacceptable behavior, the attempts have been clouded and abandoned in light of fear and panic. Individuals have come to only a premature understanding of this type of human behavior before making false assumptions and conclusions about the separation of behavior and how to handle the deviation of sexuality. Often this has been the result of ulterior motives based on economics, gender inequality, domination, and class hierarchy independent of the nature of sexuality but tied to the consequences and resulting outcomes of certain types of sexual behavior.

While it is understandable that individuals would react to behavior they barely understand with fear and uncertainty and attempt to apply a tangible and controllable threat to it, the sexual crime panics of the 20<sup>th</sup> and 21<sup>st</sup> century have created numerous problems in the social fabric and criminal justice system. As society has moved forward and advanced in many different areas, the United States is still stunted in its growth toward truly understanding and solving for the problem of sexual offending. Instead, the birth and resulting death of the first two panics left a starting point for the third sex crime panic in that society did not deconstruct previous notions of sexual offending and accompanying laws but rather used the previous two panics as a starting point to advance the laws to further control and contain the population of sexual offenders. As a result,

ineffective laws are exacerbating the problem of sexual offending and straining the criminal justice system.

In order to begin making progress, there needs to be a deconstruction of previous views toward the population of offenders in order to reconstruct a more representative description of what sexual offending really encompasses, who is a threat, and why these types of deviations occur in society. This involves the investigation into not only the individual causes of sexual deviation but also the larger societal creation of boundaries of sexual behavior. Through this reconstruction, proper methods of treatment and containment can be achieved, modeled on the root causes of the deviant behavior. Further, this reconstruction can help to eliminate those actions grouped together under the large umbrella of sex offenses that are not threatening to the public, and society can come to a better understanding of the diversity of offenses that constitute sexual offending instead of viewing all individuals as pedophiles and predators.

At the same time an appropriate evaluation into the laws governing offenders must be conducted and made available to the public by appropriate and trustworthy individuals and organizations that include criminologists, sociologists, psychologists, urban planners, economists, and special teams headed by state departments. The results of these evaluations must play key parts in discussions on future amendments and legislation with regard to this specific population and must include input from examinations into causes of sexual deviance. Through this collective process, legislation can begin to be effectively implemented to solve the problem of sexual offending.

Sexual deviance can be very harmful to individual victims, associated victims, offenders, and society as a whole. Certain types of offending are very serious and warrant

appropriate measures of containment and control but also treatment and rehabilitation. While it is of concern to implement any law and risk failure and threatened safety, the laws this society continues to pass are not effective and will not become more effective by increasing the severity of the punishments and civil requirements. Of concern for the present day situation is less on controlling the offending and more on the effects of the laws on the safety of individuals, the well-being and eventual reintegration and rehabilitation of the offender, and the instances of recidivism among the population. Failure to improve the effectiveness of the laws will only result in higher instances of offending and an incarcerated, non-contributing population, poverty, cut funding in other areas of social welfare, and fear.

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