1 IN THE SUPREME COURT OF THE UNITED STATES

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3 CONNECTICUT DEPARTMENT OF :

4 PUBLIC SAFETY, ET AL., :

5 Petitioners :

6 v. : No. 01-1231

7 JOHN DOE, ET AL. :

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9 Washington, D.C.

10 Wednesday, November 13, 2002

11 The above-entitled matter came on for oral

12 argument before the Supreme Court of the United States at

13 11:04 a.m.

14 APPEARANCES:

15 RICHARD BLUMENTHAL, ESQ., Attorney General, Hartford,

16 Connecticut; on behalf of the Petitioners.

17 THEODORE B. OLSON, ESQ., Solicitor General, Department of

18 Justice, Washington, D.C.; on behalf of the United

19 States, as amicus curiae, supporting the Petitioners.

20 SHELLEY R. SADIN, ESQ., Bridgeport, Connecticut; on behalf

21 of the Respondents.

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P R O C E E D I N G S

(11:04 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument now in Number 10-1 -- 1231, the Connecticut Department of Public Safety versus John Doe.

General Blumenthal.

ORAL ARGUMENT OF RICHARD BLUMENTHAL

ON BEHALF OF THE PETITIONERS

MR. BLUMENTHAL: Thank you, Mr. Chief Justice, and may it please the Court:

This case, like Alaska's, is about fully accurate, concededly true public record information about convicted sex offenders that citizens of Connecticut and the 50 other States need and deserve -- indeed, they demand be made available and accessible -- so they can make choices about how to protect themselves, their families, and their children.

And each of the convicted sex offenders on this registry has received a hearing, a full and fair hearing, many of them a trial, all of them the full panoply of due process rights and have been found guilty beyond a reasonable doubt.

QUESTION: In this case, General Blumenthal, we're not talking about ex post facto. We're just talking about due process of some sort because the Second Circuit

1 said this couldn't be applied whether it was done
2 afterwards or before.
3 MR. BLUMENTHAL: We are, indeed, Mr. Chief
4 Justice, talking only about the due process issue and only
5 about whether, first, the listing on this registry is
6 defamatory and, second, whether the defamation, if, in
7 fact, it exists -- and we say it doesn't -- is a violation
8 of the Due Process Clause in the way that it is imposed
9 here, that is, under Paul v. Davis, whether there is a
10 loss or alteration of right or status as a result of that
11 defamation --
12 QUESTION: It's a procedural due process claim,
13 not substantive due process.
14 MR. BLUMENTHAL: The -- the claim has been a
15 procedural due process claim, although the United States
16 as amicus has raised -- and we welcome that it has
17 raised -- the substantive due process issue. But --
18 QUESTION: We don't normally address issues
19 raised by amici, do we?
20 MR. BLUMENTHAL: I don't know whether the Court
21 is more hospitable to claims that may be raised by amici
22 from the United States Government, but it certainly is a
23 relevant issue to be addressed here because many of the
24 claims raised under the guise of due process really
25 involve line drawing and categories. For example, the

1 question of which offenses should be listed on the
2 registry really is a legislative determination.
3 QUESTION: Well, the Second Circuit's position
4 puts us -- decision puts us in a somewhat difficult
5 position. It's a procedural due process opinion, and we
6 have to say, procedural due process to protect what right?
7 So we have to go back and find out what the basic right
8 they're talking about is, and I suppose the narrow way to
9 do it is to look just to whether or not there's -- there's
10 a Paul versus Virginia type of claim with this -- with
11 this -- with a stigma --
12 MR. BLUMENTHAL: Certainly that is the way
13 the -- the case comes to the Court, raising that issue,
14 and it's one that we believe merits reversal of the Second
15 Circuit. We agree -- and I must say very emphatically we
16 agree so far as the issue of stigma is concerned -- that
17 the implication as reached by the Second Circuit is
18 correct, that is, that every person on this list is more
19 likely than the average person to be currently dangerous.
20 We think that implication is true. Every bit of
21 information on this registry, in fact, is concededly true.
22 And there is differentiation among the different
23 registrants. The differentiation occurs by the offense;
24 that is, the information that is listed as to when the
25 offense occurred, the nature of the offense, the number of

1 offenses enables the public, having this information
2 accessible and available, to make judgments about whether
3 that individual in fact may be dangerous. And of
4 course --
5 QUESTION: May I ask you a question about your
6 system? Last year we had a case that came, I think, from
7 Kansas, McKune, involving whether a person had to -- could
8 be, in effect, compelled to go into a sex offender
9 program. Does your -- and that -- presumably the -- those
10 treatment programs do some good in preventing recidivism.
11 Does -- does your reporting system give the convicted
12 offender a chance to differentiate between whether he went
13 through such a program and one who did not?
14 MR. BLUMENTHAL: There is --
15 QUESTION: Does it draw any distinction between
16 those two?
17 MR. BLUMENTHAL: Justice Stevens, there is no
18 category of information on the registration, as it's made
19 available to the public, about whether there has been
20 treatment. The information provided is very simply
21 address, identifying factors --
22 QUESTION: So they treat one who had treatment
23 and one who had no treatment exactly the same.
24 MR. BLUMENTHAL: That is correct, so far as the
25 information provided to the public is concerned. And the

1 reason, if I may presume to say it, may be that the
2 effectiveness of treatment may be problematic, and the
3 same is true with hearings on dangerousness. The
4 unreliability of these hearings has been a very, very
5 substantial problem, and the kind of information that may
6 come to the public from such hearings or from information
7 about treatment may be as misleading as it is accurate in
8 many instances.
9 QUESTION: Would you -- would you agree that
10 there is at least some subclass of cases here in which the
11 non-dangerousness could be shown in a way that probably
12 was highly accurate and did not involve the -- the
13 difficulties that you raise?
14 What I've got in mind is this. The -- the
15 categories of individuals who are listed under the
16 Connecticut statute include young men who as teenagers had
17 intercourse with younger teenage girls. No one, by normal
18 standards of English usage, would say at the age of 25
19 that -- that a -- a young man like that is dangerous in
20 any sense that we would associate dangerousness with --
21 violent sex acts and things of that sort. So there seems
22 to be a -- a category, not merely a set of individuals who
23 may prove they're not dangerous, but a category that is
24 presumptively not dangerous in the sense that the others
25 are. And yet, there is no way for them, in effect, to --

1 to get themselves declared ineligible for the -- for the
2 stigmatization that -- that goes on.
3 Why isn't there a due process problem that is
4 legitimately raised as at least to a category like that?
5 MR. BLUMENTHAL: There -- there is, in fact,
6 Justice Souter, a category of the registrants who are
7 excepted for the -- a -- a category of convicted offenders
8 who are excepted from the registry if, for example, they
9 are 18 or younger and they commit statutory rape, if the
10 victim is 13 to 16 years old. There are exceptions for
11 making accessible to the public information --
12 QUESTION: What do -- what do they have to do to
13 get the exception?
14 MR. BLUMENTHAL: At the time of sentencing, that
15 finding is made by the sentencing court, or later, that
16 that kind of registration is not required by public
17 safety.
18 QUESTION: What about the ones who have already
19 been sentenced? In other words, the -- the -- sort of the
20 carryover class that you pick up the minute the statute
21 goes into effect? I mean, these -- these are the ones who
22 are the -- raising in -- in the prior case, the ones who
23 are raising the ex post facto kind of claim. What do you
24 do about them?
25 MR. BLUMENTHAL: The -- the legislature has made

1 a determination that certain -- under certain
2 circumstances, the crime is not registrable, that is,
3 there is no requirement for registration. In certain
4 instances unquestionably, Justice Souter --
5 QUESTION: Well, but take -- take -- simply take
6 the case as an example. The 19-year-old boy the --
7 whatever it is -- 14-year-old girl have intercourse.
8 Is -- is that person, if convicted prior to the date of
9 the statute, subject to exception from the listing, and --
10 and how --
11 MR. BLUMENTHAL: They -- they could go back to
12 the sentencing court. There is a provision --
13 QUESTION: I see.
14 MR. BLUMENTHAL: -- that someone who would fit
15 the exceptions can go back to the sentencing court.
16 QUESTION: Does this -- does this category fit?
17 Let's take -- those ages will do fine, 19 and 14. Does
18 that fit within an excepted category?
19 MR. BLUMENTHAL: I'm sorry, Justice Ginsburg.
20 I'm -- I'm not sure that I followed the -- the specific
21 class that Justice Souter was referencing.
22 QUESTION: You said that there are certain
23 categories of people who can be exempted from that, and I
24 asked if the hypothetical that Justice Souter raised --
25 that particular hypothetical -- fits within that exempted

1 or excepted class.

2 MR. BLUMENTHAL: I believe that it could.

3 QUESTION: It doesn't on my list here. What it

4 says here -- I mean, maybe I'm wrong in the statute which

5 my law clerk looked up. She's usually right. And it's

6 that you -- you get into the exception to go back to the

7 sentencing court if you committed the sexual intercourse

8 when you were under the age of 19 with a victim between 13

9 to 16 and you were 2 years older.

10 So I think that -- that Justice Souter's

11 hypothetical was purposely created --

12 QUESTION: Nineteen.

13 QUESTION: -- so they didn't fit within that

14 exception. And -- and I -- I suspect that we can find a

15 large number of people who would be convicted of statutory

16 rape who don't fit within this exception and who are,

17 therefore, thrown in. And I think the point of his

18 question -- it would -- certainly would be mine -- is what

19 about those people.

20 MR. BLUMENTHAL: And -- and that question really

21 is the more fundamental issue about legislative line

22 drawing and unquestionably --

23 QUESTION: Well, before we get to line drawing,

24 I misunderstood your response to me I guess. What is the

25 answer? Are those people in my hypothetical exempted or

1 do they have a process by which they can be exempted or
2 not?
3 MR. BLUMENTHAL: Maybe I should --
4 QUESTION: Justice Breyer understands that they
5 would not be exempted from listing. And I -- I guess --
6 Is he right or isn't he?
7 MR. BLUMENTHAL: I -- I believe that probably
8 they would not be exempted, although they could go back to
9 the sentencing court, and determine whether the
10 circumstances of that hypothetical and -- and -- I'm
11 not --
12 QUESTION: But what is the category?
13 MR. BLUMENTHAL: But I had in mind all --
14 QUESTION: What is the category, General
15 Blumenthal, in which such a person might go back? There
16 seem to be rather precise categories that are excepted
17 with an age range, and if you fall outside that age range,
18 there doesn't seem to be built into this scheme any
19 discretionary exercises.
20 MR. BLUMENTHAL: That is correct, Justice
21 Ginsburg. And someone who was not within the exemption --
22 and -- the hypothetical may put that person outside it --
23 could not go back. The -- the legislature has drawn that
24 line, and it's done so because it has to draw lines
25 somewhere and has imposed that classification because it's

1 judged it to be in the public interest to do so.

2 QUESTION: Let's assume -- you know, we accept

3 the fact that line drawing has to be done and so do the

4 people on the other side of the case. Their claim is that

5 the fact is we've got at least some category which we can

6 identify on a categorical basis which is being stigmatized

7 as dangerous for a period of -- I guess, a minimum of 10

8 years. And all they're asking for is a way out. They're

9 not even claiming that you affirmatively have got to make

10 a proof of dangerousness in the first instance with

11 respect to those. They are saying, as a matter of

12 procedural due process, there ought to be a way out and

13 there is none. That's not to contest line drawing. That

14 is to contest the fact that the State could let them have

15 the burden of getting out, and the State still won't do

16 it.

17 What is the justification?

18 MR. BLUMENTHAL: The justification is that the

19 information that is put on the registry is accurate. The

20 stigma, if there is any stigma, results from the

21 conviction of that offense, and --

22 QUESTION: No. That is not -- I don't think

23 that's their argument. Their argument is not that they

24 are -- are being subject to a stigma for 10 years because

25 they were convicted. They are being subject to a stigma

1 for 10 years because the State of Connecticut is saying
2 through the Internet in -- in effect, that they are
3 currently dangerous. That's the stigma, not the
4 conviction, the current state of dangerousness which is
5 stigmatizing.
6 MR. BLUMENTHAL: With all due respect, Justice
7 Souter, the court of appeals did not find that the fact of
8 being on the registry means that every individual is
9 subject to that stigma.
10 QUESTION: No. What it means is what you have
11 just -- to begin with, what you just stipulated, that in
12 fact there is a higher probability, a -- a greater risk
13 of -- of dangerousness. But if, in fact, there is no
14 means of differentiation for any one person on the
15 register, then that probability judgment is going to be
16 applied in the public mind, naturally, to every person on
17 that unless there is a way to establish an exemption.
18 MR. BLUMENTHAL: There is differentiation
19 insofar as the crime itself is listed.
20 QUESTION: There is, and yet the very fact that
21 the State chooses to list that crime is a clear indication
22 that the State thinks that people in that category of
23 crime deserve to be listed with others who are potentially
24 dangerous. So the State's very categorical treatment, in
25 effect, has said to the public, you can't draw any clear

1 distinctions based on the particular crimes that we'll
2 also inform you of. You've already made the categorical
3 judgment.
4 QUESTION: Mr. Blumenthal, may I ask you whether
5 this statute has helped in any way in reducing sex crimes
6 in Connecticut?
7 MR. BLUMENTHAL: We -- we can't really say,
8 Justice O'Connor, at this point because the Internet
9 availability has been suspended by order of the court.
10 All of this information --
11 QUESTION: How long was it in effect?
12 MR. BLUMENTHAL: It was in effect for a couple
13 of years, and even then it was too early to make a
14 judgment as to whether or not it was having any
15 discernible effect statistically, and there's nothing in
16 the record on that point.
17 I -- I should report that there are now about
18 3,000 registrants and some 500 approximately have been
19 convicted again of a registrable offense.
20 The point here is, though, that all of this
21 information is public record information. The requirement
22 and the obligation for registration existed before 1998.
23 In fact, it began in 1994. So no status or right was
24 altered. And the registration requirement really is
25 separate from how the information is made available to the

1 public, and that goes to the Paul v. Davis issue.

2 And with your permission, Mr. Chief Justice, I'd

3 like to reserve the balance of my time.

4 QUESTION: Very well, General Blumenthal.

5 Mr. -- General Olson, we'll hear from you.

6 ORAL ARGUMENT OF THEODORE B. OLSON

7 ON BEHALF OF THE UNITED STATES,

8 AS AMICUS CURIAE, SUPPORTING THE PETITIONERS

9 MR. OLSON: Thank you, Mr. Chief Justice, and

10 may it please the Court:

11 General Blumenthal conveyed three very important

12 aspects of this case in his opening sentence. In essence,

13 he said the people of Connecticut seek access to

14 concededly truthful, public record and otherwise public

15 available information concerning convicted sex offenders.

16 These individuals have no constitutional right to conceal

17 these public truths from interested public citizens.

18 The Second Circuit examined the registry and

19 said not only is the information about every individual

20 concededly true, but the registry -- and this is set out

21 verbatim in page 6 of Connecticut's -- the blue brief.

22 The Department of Public Safety has not considered or

23 assessed the specific risk of re-offense of any individual

24 prior to his or her inclusion within this registry and has

25 made no determination that any individual included in the

1 registry is currently dangerous.

2 QUESTION: That's what it says on the registry

3 or on the Internet?

4 MR. OLSON: Exactly.

5 QUESTION: But you could skip that entirely.

6 You get -- this is on the -- it's not listed -- I can go

7 to the Internet and go directly to the person. This

8 information -- this disclaimer -- is not associated with

9 the individual offender listing. It's -- it's stuck in

10 the middle of a bunch of stuff before.

11 MR. OLSON: Well, that's true, Justice Ginsburg.

12 It is not repeated for every name in the registry, but

13 it's clearly set forth in the registry itself. It's put

14 in italics.

15 And the -- and the State goes on to say,

16 individuals included within the registry are included

17 solely by virtue of their conviction record and State law.

18 The main purpose of providing the -- this data on the

19 Internet is to make the information more easily accessible

20 and available, not to warn about any specific

21 individual --

22 QUESTION: Well, except for the fact that --

23 that the -- the State has made a judgment and it doesn't

24 deny it, that individuals who have been convicted of

25 crimes in the categories subject to the law, are as a

1 categorical matter more likely to commit them in the
2 future. They are more likely to be dangerous than the
3 general population. And so it's true. The State does
4 not, in its register, say, and by the way, this John Doe
5 is especially dangerous. But the State can't deny that
6 it's saying this John Doe is part of the category that we
7 think dangerous enough to list through the Internet.
8 MR. OLSON: Well, what they do say is that the
9 public is entitled to and should make specific judgments
10 about specific individuals.
11 QUESTION: But it can't. I mean, it cannot do
12 that on the -- on the basis of what the State puts out
13 because all it knows, from what the State puts out, is the
14 category the person falls into.
15 MR. OLSON: Precisely. And the point that you
16 were making earlier, Justice Souter, is that there are
17 different types of crimes that may be of interest to
18 different individuals. If you have small --
19 QUESTION: All -- all of which, however, are
20 regarded as being within some -- above some threshold of
21 dangerousness or they wouldn't be listed on the Internet.
22 MR. OLSON: Because they are -- they are
23 responding to the people's request in 50 States -- and the
24 people of the United States through the Congress -- to
25 make information available to us about people who have

1 been convicted of sex crimes.

2 QUESTION: I'll grant you that, but have the

3 people of the 50 States also said, and we don't want there

4 to be any way out for someone who can prove that he is

5 either non-dangerous or -- or in a category which is

6 highly -- which is much less likely to be dangerous?

7 MR. OLSON: Well --

8 QUESTION: I mean, if the people said there's no

9 escape?

10 MR. OLSON: If -- if -- there -- that's -- the

11 Federal statute allows the State to exercise judgment with

12 respect to the use of its resources with respect to this

13 public record, truthful information.

14 Now, the State of Connecticut -- the question

15 that you're raising, it seems to me, falls squarely within

16 the concept of a substantive due process challenge, not

17 a --

18 QUESTION: Well, but isn't it -- it's also

19 squarely within procedural due process. The -- the State

20 is saying you're putting a label on me, and that's okay if

21 you give me a way to get out of it.

22 MR. OLSON: But the State --

23 QUESTION: That's a procedural due process

24 challenge.

25 MR. OLSON: The label that the State is putting

1 on is that you have been convicted of a sex crime and that
2 the -- and you must draw -- we have not decided that you
3 are dangerous.
4 QUESTION: No, but that's where -- I mean, I
5 think that's where the -- the -- we're not sort of meeting
6 each other in the argument. The State does say that much.
7 No question about it. But by this categorized treatment,
8 the State is saying something further. The State is
9 saying people in these categories are likely to be more
10 dangerous. It's a -- it's the second statement that is
11 the gravamen of the problem that we've got here, not the
12 truthful first statement.
13 MR. OLSON: Well, the -- the Court has said
14 repeatedly that the -- this Court will examine challenges
15 with respect to the -- the -- in that category on a
16 substantive due process basis if the classification is
17 reasonable --
18 QUESTION: Well, that's -- that's right there,
19 but that is not the challenge that's being made. There's
20 no challenge being made here that the State cannot have a
21 register -- or a register that is -- is structured by
22 category. The challenge that's being made here is that if
23 you do that, there should be a due -- there should be a
24 procedural mechanism for somebody who can show that he's
25 not dangerous to get out. That isn't substantive due

1 process.

2 MR. OLSON: Well, and -- and our submission is

3 that the determination -- and this Court has stated it as

4 recently -- recently as a year ago that sex offenders are

5 more likely to be recidivists than other categories of

6 individuals, but that that does not mean, Connecticut goes

7 on to say, that any individual is necessarily dangerous.

8 That classification is rational.

9 Now, it is also rational for Connecticut to have

10 determined, as it did, that we'll accord opportunities for

11 people to address in -- in certain circumstances the

12 nature of their conviction. But it's also rational for --

13 QUESTION: General Olson, can I ask you a

14 broader question? Do you think it would be permissible

15 for Connecticut to require every person in the category to

16 wear a badge that recited the information that goes on the

17 Internet?

18 MR. OLSON: We think that that would be a very

19 difficult situation, Justice Stevens, in that -- the --

20 and -- and I would be concerned about that. But --

21 QUESTION: Why? What's wrong with that?

22 MR. OLSON: Well, because that requires the

23 individual to carry that notification himself to convey

24 the government's message.

25 QUESTION: Yes.

1 MR. OLSON: It also requires that message to be
2 brought into every situation that the individual is
3 involved in. The Internet is a reasonable and relative --
4 minimally intrusive way of responding to a question that a
5 citizen may ask of a State and to which the citizen is
6 entitled to an answer. The citizen here has to ask the
7 question. It isn't carried around with the individual
8 everywhere the individual goes.
9 And this is public record information. As one
10 of the questions in the earlier argument implied, if a
11 private citizen -- Cox Broadcasting, for example --
12 decided to make this information available to the public,
13 it would be -- have an absolute constitutional right to do
14 so. It seems anomalous to suggest that the State of
15 Connecticut cannot impart to its citizens the same
16 information that Cox Broadcasting would have an absolute
17 constitutional right to do so. It seems to us --
18 QUESTION: But nobody is -- nobody is saying it
19 can't. Nobody is saying Connecticut can't do this. All
20 they're saying is if Connecticut does it, they've got to
21 give us an -- an escape hatch.
22 MR. OLSON: Well, it seems to me, Justice
23 Souter, that that conflicts directly with what the Court
24 said in Paul versus Davis, that in the first place, there
25 is not defamation here because it's a truthful imparting

1 of information.

2 QUESTION: If -- if there is no potential for a

3 defamatory or stigmatizing statement, then there is no

4 case. I agree with you. But simply to say there's no

5 defamation here is -- is, with respect, it seems to me, to

6 try to avoid the question.

7 MR. OLSON: Well, I don't think it is, but --

8 but even if it were defamation, it is not -- there is no

9 stigma plus, as this Court required in Paul versus Davis.

10 There's no confinement of liberty. There's no denial of

11 any individual on this list of a right to a job --

12 QUESTION: Is there stigma plus in Justice

13 Stevens' hypothetical, wearing the badge?

14 MR. OLSON: There may well be.

15 QUESTION: Why isn't there stigma plus then in

16 creating a -- in effect, a subclass of citizens who have

17 got to go through quarterly registration possibly for the

18 rest of their lives?

19 MR. OLSON: It -- it -- we submit that that is a

20 minimal, reasonable way for the State to keep track of

21 people who have committed crimes and then --

22 QUESTION: But, General Olson, suppose you look

23 at it as a stigma minus. What about the hypothetical I

24 asked earlier about somebody who took -- a convicted felon

25 who took the -- the treatment program and survived it and

1 one who did not? They're treated alike in this system.
2 MR. OLSON: Yes, they are because the State has
3 made a determination, as have 49 other States and
4 Congress, that the people are entitled to certain public
5 record information. That does not apply --
6 QUESTION: But it's -- it's incomplete
7 information as to some.
8 MR. OLSON: It's -- well, it is -- it is
9 incomplete information as to everyone, we submit. But it
10 does -- it is complete information with respect to whether
11 individuals have been convicted of a sex crime. That is
12 public information. That is information to which the
13 citizens are entitled.
14 Thank you.
15 QUESTION: Thank you, General Olson.
16 Ms. Sadin, we'll hear from you.
17 ORAL ARGUMENT OF SHELLEY R. SADIN
18 ON BEHALF OF THE RESPONDENTS
19 MS. SADIN: Mr. Chief Justice, may it please the
20 Court:
21 In the eyes of a concerned public, every person
22 posted on Connecticut's Megan's Law list poses a serious
23 threat to the public, particularly to children. The
24 public knows that Megan's Law is named for --
25 QUESTION: You -- you state that as a fact,

1 Ms. Sadin. What is the -- what is the record support for
2 that statement?
3 MS. SADIN: Petitioners themselves have
4 stated --
5 QUESTION: I'm asking you -- Ms. Sadin, I'm
6 asking you what is the record support for the statement
7 you just made?
8 MS. SADIN: That -- that the public knows this
9 is a Megan's Law list?
10 QUESTION: That -- that the public knows that --
11 what -- that they're -- that they're dangerous.
12 MS. SADIN: The -- the message of dangerousness
13 comes from a number of sources, Your Honor. The first is
14 that the purpose of this law, the declared purpose of this
15 law, repeated by petitioners and repeated by the lawmakers
16 who passed it, is to protect the public from recidivist
17 sex offenders, and particularly to protect the children
18 from such offenders.
19 The law is administered and the registry is both
20 put together and published by the State police. The State
21 police on the website state that it is their mission to
22 prevent crime and protect the public.
23 QUESTION: But they also say that it -- it --
24 they're not saying that anyone is dangerous on that same
25 website, don't they?

1 MS. SADIN: They don't actually. The disclaimer
2 does not say that everybody is not dangerous. What the
3 disclaimer says is that no dangerousness assessment is
4 made with respect to any individual.
5 QUESTION: Well, why isn't that good enough?
6 MS. SADIN: It isn't good enough because all it
7 says is what we already know, which is that nobody has
8 been assessed for dangerous or not. And it's contradicted
9 by the repeatedly emphasized message to the public, which
10 petitioners themselves stressed so urgently below, that
11 the purpose of this law is to publish current, monitored
12 information taken from offenders so that it can be posted
13 on the Internet so the public will know what they look
14 like and where they live at all times. That sends a very
15 compelling message.
16 QUESTION: But that's not -- that's not -- I
17 think what I took the Chief Justice is asking -- I took --
18 and I'd have a similar question, that -- that their
19 response I think to the point that I was trying to make
20 with Justice Souter, that maybe this is overly broad
21 because let's imagine the 19-year-old who simply had
22 intercourse once with a much younger woman and obviously
23 is no danger. Their response is, first, it says to the
24 public, consider every case on the merits. We're not
25 saying whether it's dangerous or not.

1 Second, when the people in the neighborhood to
2 which the individual has moved look him up on the Net,
3 they'll see what he did, and people aren't idiots.
4 They'll understand that this is there because he fell
5 within the law.
6 And besides that, they say, it's too difficult
7 for us to draw finer lines. At least the legislature
8 reasonably so could conclude.
9 So the question I had is, is there any objective
10 evidence that people do cause mistake -- the significance
11 of this 19- or 20-year-old boy having his name there? Are
12 we just doing that because we all know -- in quotes -- or
13 is there evidence of it?
14 MS. SADIN: There were -- the -- the court --
15 the district court's decision and the court of appeals
16 decision that affirmed it were based on rule 9(c)
17 statements, undisputed facts on summary judgment, and they
18 included the fact that this is commonly known as a Megan's
19 Law. There's no disputing that. Everybody in this
20 country knows that Megan's Law was passed in response to
21 the rape and murder of a child victim. That is the
22 genesis of these laws, and it's undisputed that that's how
23 the public understands them.
24 Also not in dispute is that it is the
25 department --

1 QUESTION: Well, the public also understands
2 that official records have to be interpreted in different
3 ways. We've said that in -- in prior decisions of this
4 Court. When there's a notice on the police bulletin board
5 and the press publishes it, it says what it says.
6 MS. SADIN: Except that these --
7 QUESTION: This -- if -- if you have sort of a
8 First Amendment argument you're concerned with here, it --
9 it seems to me that you're arguing at cross purposes to
10 our precedents.
11 MS. SADIN: As I understand your question, if --
12 the problem is that it is not just truthful, already
13 public information. The list does not just include
14 someone's conviction. It also includes a current
15 photograph and a current address --
16 QUESTION: Is that not truthful?
17 MS. SADIN: The current photograph and the
18 current -- it is not because the message that it conveys
19 is that this is a person who is being watched and
20 monitored, who must, at risk of felony conviction --
21 QUESTION: Well, what is the constitutional
22 basis for your argument? Could we move to that? I mean,
23 you're here on a constitutional claim, and I'm not sure
24 what it is, to tell you the truth.
25 MS. SADIN: It is that there is an established

1 liberty interest in -- in a government impose -- in
2 avoiding a government-imposed stigma, which is not just
3 government name-calling.
4 QUESTION: Well, how does some liberty interest
5 and reputation survive the Paul versus Davis case?
6 MS. SADIN: But it is more than a liberty
7 interest and reputation. This is a government-imposed
8 stigma which is -- it's part and parcel of the regulations
9 that are imposed on people. The information posted on the
10 registry is extracted from registrants. On pain of felony
11 conviction, they must --
12 QUESTION: Can -- can a truthful statement be
13 stigmatizing?
14 MS. SADIN: This is not a truthful statement.
15 QUESTION: Well, then do you agree that a
16 truthful statement cannot be stigmatizing?
17 MS. SADIN: No. A truthful statement can also
18 be stigmatizing, but -- but it's not --
19 QUESTION: Is that consistent with Paul versus
20 Davis?
21 MS. SADIN: I think Paul versus Davis requires
22 that there be a -- as there is in this case, a false
23 stigma.
24 And I think we have to go back to the
25 understanding and the basis of this law. This is a law

1 which was designed to -- and the public knows it was
2 designed to -- protect the public from dangerous,
3 recidivist offenders, and that is not true with respect to
4 many of the people, perhaps most of the people -- we don't
5 know -- who are on this list. Not only --
6 QUESTION: A danger -- potentially dangerous.
7 I mean, the government doesn't have to make a -- a rock-
8 solid assessment that these people are dangerous. Why
9 isn't it enough for the government to say this is a
10 category of people who may be dangerous?
11 MS. SADIN: The government says --
12 QUESTION: And is that true? It is perfectly
13 true. Can the public act on it? If it wants to, it can;
14 if it doesn't want to, it doesn't have to. It may make
15 further assessment of whether, indeed, the may is -- is
16 close enough or -- or -- but -- I don't know why you
17 insist on saying that the -- that the State has said these
18 people are dangerous. It seems to me, even without the
19 disclaimer, the most the State has said is that these
20 people may be dangerous.
21 MS. SADIN: The State says -- with respect, the
22 State says more, but even if it said that these -- that
23 these people may be more dangerous than other people, that
24 too reduces people in the eyes -- in the eyes of the
25 public. It causes people to, as any injury to reputation

1 would, not want to hire them, not -- want to avoid them,
2 not want to live in the same neighborhoods with them.
3 And this Court, with respect to whether or not
4 there are statistics which show that this -- that some
5 subgroup of sex offenders are more likely to recidivate,
6 this Court has never relied just on statistical
7 information to make dangerousness assessments about
8 individuals, even in the context --
9 QUESTION: Suppose this -- this same information
10 was on the -- on the Internet through some private service
11 and I got into the Internet, and I said I don't want to
12 live next to -- to this person. That is my judgment that
13 I can make --
14 MS. SADIN: Well, there are two points --
15 QUESTION: -- based on a public record.
16 MS. SADIN: There are two points with respect to
17 that, Your Honor. First of all, a private citizen would
18 not have the power, as the government does, to obtain
19 current -- to require people to register current
20 photographs and current addresses for posting, and there
21 is not the same government-imposed imprimatur. These are
22 people who are being watched. We are requiring them to
23 provide this information to us on a regular basis. We
24 advertise on the website that we keep this information as
25 updated as possible in -- in furtherance of the Department

1 of Public Safety's declared mission of protecting the
2 public and preventing crime. All -- the entire context of
3 this registry and the purpose of the law sends the
4 ineluctable message that the people who are posted pose a
5 present threat to the public.
6 QUESTION: Let -- let me give you that. What's
7 bothering me -- and it may be I'm just missing something,
8 but if I am, I've missed it for a long, long time.
9 What has this to do with the procedural due
10 process claim? I'll -- I'll say that my reason for
11 doubting that it does is first there is -- there are some
12 laws that are so basic that they're not written anywhere,
13 not even in our cases. What I used to say was one of them
14 is you don't ever have to have a hearing if there's
15 nothing to have a hearing about. And here there's nothing
16 to have a hearing about as far as the statute is
17 concerned. These people concede they were convicted of
18 sexually violent offenses.
19 To make the same point differently, give your
20 clients all the procedures they want, every procedure in
21 the world, and let's suppose they prove they're absolutely
22 not dangerous. Still, they were convicted of a sexually
23 violent offense. So it wasn't the lack of procedure that
24 caused the problem. It was the fact that in your view the
25 Constitution of the United States does not permit the

1 State of Connecticut to turn these consequences upon being
2 a sexually violent offender. That's a different argument,
3 and the only kind of clause I've ever seen that would make
4 that constitutionally impermissible is the Due Process
5 Clause in its substantive sense.
6 And my point is not simply a technical point,
7 for if you had focused on the argument, there would be a
8 record that would answer questions like the Chief
9 Justice's. You would have been forced to create a record
10 that would have gone into all the State's reasons and what
11 empirical data there was, whether this was justified or
12 not.
13 That's a long question. But I'd -- it's at the
14 root of what's bothering me.
15 MS. SADIN: I understand, Your Honor, and I
16 think -- let me see if I can respond to it sufficiently.
17 We are not asking -- first of all, let me begin
18 by saying the reason we don't consider it to be a
19 substantive due process analysis is that we're not trying
20 to expand the scope of the due process law to -- to
21 recognize some liberty that is not already recognized.
22 There is an interest in reputation if it is coupled with
23 the kinds of restrictions that are imposed by this law.
24 People cannot -- literally cannot -- remain at liberty if
25 they do not report what they look like and where they live

1 to the State. They will be prosecuted for a felony. They
2 cannot move without advising the State that they are doing
3 so. They cannot even leave the State for temporary
4 periods, if they're of -- of a substantial period of time,
5 without telling the State. They literally cannot remain
6 at liberty without performing these functions which are
7 not required of any other citizen.
8 QUESTION: -- in finding a liberty interest
9 here. After all, he has to give DNA. He has to give his
10 fingerprints. That isn't my problem. I'll give you all
11 the liberty interest you want.
12 My -- I don't want to repeat what I said. You
13 took it in all right. Right?
14 MS. SADIN: I think so.
15 QUESTION: Okay.
16 MS. SADIN: And let -- let me try to address it
17 now if I haven't done it yet.
18 Even if there were -- now, as I understand, Your
19 Honor, you're saying that -- that even if there were
20 narrower categories, if we were to limit this to people
21 who were more dangerous and isn't overbroad, there weren't
22 that -- that kind of issue, there still is the problem
23 because it is a procedural due process issue whether a
24 particular person poses a present threat. That isn't
25 something --

1 QUESTION: I don't think that's the issue.
2 I think the issue is the State says here's a list of
3 people who were convicted of sex offenses. Period.
4 You're telling us that this particular person is no longer
5 dangerous. We say that's not relevant to our scheme.
6 There's only one thing that's relevant: was he or she
7 convicted? If he or she was convicted, you have nothing
8 under our scheme to be heard about because the only due
9 process conviction -- the only due process hearing that
10 counts is the one that led up to the conviction.
11 That's -- that's the point, that you're saying my person
12 is no longer dangerous. The State's answer is, under our
13 scheme that's totally irrelevant. The only question is,
14 was this person convicted of a sex offense?
15 MS. SADIN: But the problem with -- the problem
16 with that, Your Honor, is that the list does not just say
17 that the person was convicted of a sex offense.
18 QUESTION: So now suppose -- that's -- what I'm
19 trying to find out what is your real argument. Suppose
20 the list said, not sex offender register, but register of
21 persons convicted -- convicted sex offender list. It said
22 that. And then it put the disclaimer that we are making
23 no judgment about this person's dangerousness right on
24 that web page with the picture, right on the page with the
25 individual's picture, and then it gave the offense of

1 conviction, the date, the time served, and that's what was
2 presented -- with that legend in bold face -- every time a
3 user goes to get a picture sees that warning of what the
4 State's purpose is -- would you still have a procedural
5 due process claim?
6 MS. SADIN: I would if -- I would if the current
7 appearances and whereabouts of those people were also
8 monitored for the purpose of posting them on a list whose
9 stated purpose is to protect the public. I would not have
10 a problem if it is simply an Internet version of
11 conviction records. There is a fundamental difference
12 between public records of conviction and the
13 information --
14 QUESTION: But then I don't get the link with
15 the hearing that you're asking for. That your address
16 has -- anytime somebody's address is -- his current
17 address or place of employment -- is it a government
18 record? They have a right to get that out? I'm not --
19 I'm not sure I'm following what is the hearing that you're
20 entitled to because the government supplies your current
21 address.
22 MS. SADIN: The hearing that we're entitled
23 to -- and it isn't -- it really is more than just current
24 address, although that is one aspect of it. Monitoring
25 address and photographs and posting it for the purpose of

1 protecting the public does send a message that they're
2 dangerous.
3 But even if there -- if there were to be a -- a
4 list that simply reflected past conviction records, that
5 would not pose a problem. It isn't just the current
6 address. It is the combination of all of these things.
7 It is the context. This is a Megan's Law designed to
8 protect the public from recidivist child molesters. It
9 is -- it posts people whose current appearances and
10 whereabouts are monitored, and the State tells the public
11 that they are monitored on the website itself. It says
12 that we provide this information and we keep it as current
13 as -- as possible. It is the Department of Public Safety,
14 the State police, who post the information beneath their
15 prominently displayed mission statement that it is their
16 job in life to protect the public from -- from crime.
17 QUESTION: Well, Ms. Sadin, I don't know if the
18 FBI does it anymore. I think they used to put out a 10
19 Most Wanted list of the most dangerous offenders. Now,
20 could one of the people on that list have demanded a
21 hearing to say he didn't belong on it?
22 (Laughter.)
23 MS. SADIN: There's a fundamental distinction
24 between them because -- think about it, Your Honor.
25 The -- the 10 Most Wanted list is the result of an

1 investigation that focuses on a particular individual and
2 there are exigent circumstances. It's not just a roundup
3 of -- of the usual suspects. It does focus on a
4 particular person. And that person does not have, by the
5 way, the 10-year to life continued reporting requirements
6 based on past conduct. It will be processed --
7 QUESTION: Well, no, but he -- he's going to
8 have to be on the watch for police.
9 MS. SADIN: Well, he may be but -- but consider
10 when that person, even if he committed a violent crime,
11 is -- is arrested and when a bond hearing is heard, the
12 recidivism statistics for this kind of crime, this
13 person's past conviction record even, will not be the sole
14 determinants and determine what -- what allows him to be
15 released. It will be --
16 QUESTION: Well, he hasn't -- he hasn't even
17 been convicted of a crime. Somebody who's on that list.
18 I mean, it seems to me he's in a much better position
19 than -- than your clients. As far as anybody knows, he's
20 totally innocent, and the FBI puts him up there as the
21 most wanted without a hearing. Your clients have had a
22 hearing. They've been found to -- to be guilty.
23 They're -- it seems to me they're in much worse shape than
24 somebody on the FBI list.
25 MS. SADIN: The person on the FBI list has yet

1 to have a hearing on whether or not he was the person who
2 committed the crime, and presumably, Your Honor, if he
3 were not and if there were false information that -- that
4 led to his arrest, he would have a claim for -- for false
5 arrest.
6 QUESTION: Exactly. But just putting him --
7 putting his face out there tells the public, does it not,
8 this is a dangerous person you ought to be on the lookout
9 for. He hasn't had any hearing on that.
10 MS. SADIN: Yes, but he will. And there is at
11 least some individual assessment, an individual
12 investigation. That hasn't happened with respect to the
13 people on my list.
14 QUESTION: Why do you have to have an
15 individual -- I would -- if you were arguing the
16 substantive due process argument, which it's clear by now
17 is what I think the right category is --
18 (Laughter.)
19 QUESTION: -- you'd have the person who was in
20 Justice Souter's example and he would come in and say, it
21 violates the Constitution to apply this statute to me. At
22 least give me a hearing.
23 But that's not who you're representing. You're
24 representing a class of people, including the -- the 19
25 most dangerous sexual offenders in all of Connecticut.

1 And you're saying as to them the Constitution requires a
2 hearing and the State responds, what are you talking
3 about? First, they're very dangerous. Second, they've
4 all been convicted of crimes. Third, a hearing will be a
5 waste of time as to them and simply delay the
6 implementation of the statute and a lot of other arguments
7 besides. And anyway -- all right. I'm just making up all
8 their arguments, but what is your response as to them?
9 MS. SADIN: Yes. Yes. Your Honor has asked an
10 even longer question, so let me try again.
11 QUESTION: Yes.
12 MS. SADIN: It -- even -- first of all, this is
13 a very broad statute. It does not cover just the most
14 dangerous offenders. Obviously it covers people who have
15 been convicted of nonviolent crimes, been sentenced to
16 probation, been sentenced to unconditional release. It
17 covers the teenagers about which there has been some
18 discussion. And by the way, some of those teenagers can
19 get off and some of them --
20 QUESTION: I'm not being clear. I know that.
21 I'm saying that if they were arguing substance, those
22 people could make the argument on their own. Don't we
23 have to consider you in terms of the 19 worst?
24 MS. SADIN: Even with respect to -- even with
25 respect to the 19 worst, it still remains an individual

1 determination whether a person poses a threat. That
2 person could have a --
3 QUESTION: No, but excuse me. Are you claiming
4 that there's got to be a determination in advance before
5 the person can be put on the register, or are you claiming
6 that a person who is on the register who claims to be non-
7 dangerous should be allowed a hearing to get off it?
8 MS. SADIN: I'm saying -- well, this is a -- the
9 registry is systematic. It's not as though it's any
10 surprise --
11 QUESTION: Never mind -- what is your position?
12 MS. SADIN: It is a --
13 QUESTION: Has there got to be a hearing in
14 advance before the name goes on?
15 MS. SADIN: There has to be a hearing in advance
16 not before the person registers, but before the person is
17 publicly -- yes, before the person is publicly posted.
18 And that is true even with respect --
19 QUESTION: With the burden on the government
20 to -- I want to get the full dimensions of your position.
21 The registry is all right, I gather. There was no
22 injunction against the registry. The registry remains in
23 place. So you're attacking only the notification.
24 MS. SADIN: Yes.
25 QUESTION: And your position on the notification

1 is not simply that a person should have an opportunity to
2 show that he or she should escape from this list, but that
3 the government has the burden before it puts -- posts
4 anybody to show that that person is currently dangerous.
5 Is that your position?
6 MS. SADIN: No. I am saying that there has to
7 be notice that you will be posted and an opportunity to be
8 heard on whether or not you belong to the very small class
9 of people who deserve to be posted. And again, we're
10 not -- the reason --
11 QUESTION: Well, let's take the category of
12 violent sex offenders. They're on the registry. You
13 don't dispute that. They're there. Everyone is on the
14 registry. Can that person, the most violent,
15 automatically be posted?
16 MS. SADIN: No. And even under the Federal
17 Megan's Law -- let me point out that even under the
18 Federal Megan's Law -- that small category of people,
19 sexually violent predators, are not allowed to -- must --
20 must have process before the government is allowed to
21 monitor them every 90 days, as everyone on Connecticut's
22 registry is done. There has to be a court finding that,
23 in fact, those sexually violent predators fit within that
24 category. And even with respect --
25 QUESTION: So no one -- no one could be put

1 on --

2 QUESTION: So what is the finding? That they

3 have to be likely to -- to offend again?

4 MS. SADIN: The -- the finding is that they fit

5 the definition of -- there -- there are a number of

6 criteria and there are expert -- expert testimony is

7 required, and so there are criteria.

8 QUESTION: Those people could be confined under

9 Hendricks, and then the law serves no -- no purpose at

10 all.

11 MS. SADIN: But those -- there is not that kind

12 of confinement law in Connecticut, but there certainly

13 is -- there would have to be procedure in connection with

14 that. There was procedure in connection with Hendricks.

15 There has to be procedure in connection with the sexually

16 violent predators who are -- who are regulated in that way

17 under the -- under the Federal Megan's Law.

18 And the point is this: Even with respect to

19 those people who have committed violent crimes, there are

20 treatment mechanisms. This Court recognized in McKune

21 against Lile that -- that recidivism rates are

22 dramatically reduced by people who receive treatment.

23 It is not difficult to provide these hearings.

24 There are dangerousness hearings done in every court in

25 every State. In Connecticut as well, there are

1 dangerousness assessments conducted even within the
2 context of this Megan's Law, Connecticut's Megan's Law, in
3 connection with exceptions and exemptions to registration.
4 QUESTION: Maybe the people of Connecticut don't
5 trust those dangerousness hearings. Maybe the people of
6 Connecticut say, I don't want to have to rely upon -- upon
7 the guesses of some psychiatrist. I do not want to live
8 next to somebody who has been convicted of a sexual --
9 sexually predatory offense, and I don't care what the
10 psychiatrists say. Now, can -- can the State of
11 Connecticut accede to the wishes of the public who feel
12 that way about it?
13 MS. SADIN: The State of Connecticut can accede
14 to the wishes of the public to have conviction
15 information. The neighbor Your Honor talks about has a
16 name. He can be looked up. The neighbor can see whether
17 or not he has a prior conviction and can move if it
18 wishes.
19 But the State of Connecticut does not have the
20 right, without providing some individual process, some
21 notice and an opportunity to be heard, to tell the
22 neighbor this is a person who is dangerous. We have the
23 State police monitoring this person. He must report to us
24 every 90 days. If he does not return his address
25 notification, he will be arrested. This is somebody we

1 are watching. This is somebody with respect to whom we
2 are giving you this information.
3 QUESTION: Well, what if -- what if it were a
4 conviction, Ms. Sadin, he had been convicted, and instead
5 of this program, it specified that he would be on parole
6 for 15 years with much the same restrictions? Would that
7 make it any different?
8 MS. SADIN: It presents a different question.
9 I mean, I don't know whether or not the --
10 QUESTION: But I -- I know it's a different
11 question or I wouldn't have asked you. But what --
12 (Laughter.)
13 QUESTION: But what I -- what I want to know is,
14 would you treat it differently or would it be the same?
15 MS. SADIN: If there has been process in
16 connection with the parole determination, the answer is
17 no. That's the fundamental point. Even with respect
18 to -- this Court, again, has never used statistics even
19 that -- even that apply to some subset to determine that
20 an individual poses a present threat, the kind of serious
21 threat that the State of Connecticut repeatedly has said
22 that is posed by the people on this list. At -- at oral
23 argument below, General Blumenthal argued that this was
24 crucial information which was necessary to protect the
25 public from -- from the kinds of dangers that -- that

1 occurred in the Megan Kanka case.

2 This is not just a -- this is not a system of

3 government name-calling. It is a system of government-

4 imposed stigma with requirements which preclude someone

5 from remaining at liberty if they do not comply and if the

6 information that -- and the information that they then

7 give up to the State, otherwise private, personal

8 information, is posted on the Internet for the repeatedly-

9 declared purpose of protecting the public from the people

10 who are posted.

11 And again, the Federal Wetterling Act requires

12 only that relevant information be released that is

13 necessary to protect the public from a particular person.

14 That is why this is an individual --

15 QUESTION: How does the statute work with

16 somebody who changes his name?

17 MS. SADIN: Excuse me?

18 QUESTION: How does the statute work with

19 someone who changes his name?

20 MS. SADIN: If you change your address, if you

21 change your name, you must -- you must report to the

22 State.

23 QUESTION: If you change your address.

24 MS. SADIN: If you change your address.

25 QUESTION: But what if you change your name?

1 MS. SADIN: You -- you -- I think you would have
2 to report that too. I don't remember whether there's a
3 particular provision, but there -- there are provisions
4 that you must -- you must update your current address and
5 information, and I -- I presume name is -- is the same.
6 QUESTION: And I -- but if you change your
7 appearance by shaving off your beard or something like
8 that, do they require reporting of that?
9 MS. SADIN: It does actually, and you are
10 required to submit to photographs whenever and wherever
11 the State tells you to and at least every 5 years. The
12 answer is yes. You cannot even leave the State for --
13 for, you know, any -- any substantial period of time
14 without reporting -- without reporting that. And all of
15 this is on pain of felony conviction. That's true even if
16 the underlying conviction which requires you to report
17 were a misdemeanor.
18 And one more -- one final point. The hearings
19 that are -- about which the Attorney General says there is
20 no reliability, not only are they conducted under the
21 Federal Wetterling Act and in connection with the
22 exemptions and exceptions under Connecticut's act, but
23 there are a number of States with already streamlined,
24 well-positioned systems who conduct these kinds of
25 hearings and who provide process. There has been no

1 complaint that those are unworkable systems. They are
2 performed -- the -- the -- less than half the States in
3 this country have categorical notification systems like
4 Connecticut's.
5 QUESTION: Citizens may not trust them.
6 Citizens have seen too many of these hearings that result
7 in the release of people who turn out to be dangerous.
8 Why -- why do you insist that the State must tell
9 citizens, we're not going to give you this information
10 because we have determined that the person is -- is not
11 dangerous and therefore you don't have to worry about it?
12 MS. SADIN: But it isn't a question of just
13 giving the public truthful information. The issue is
14 telling the public that these are people who need to be
15 monitored. They are dangerous, not you may think they're
16 dangerous and they -- and you may not, but they are. That
17 is why we are doing this to them. That's why we need to
18 know what they look like and where they live at all times,
19 and you need to know what they look like and where they
20 live at all times. That sends -- that sends a very
21 different message from they may be or they may not be.
22 That says that they are.
23 QUESTION: May I ask you to turn a little
24 attention to what is the plus? Because it's hard for me
25 to understand when you take the registry, you say is the

1 plus, and yet, you don't challenge the registry and the
2 district court doesn't require any change whatever in the
3 registry. So how can something that you say you're not
4 seeking to disturb or at least you're not challenging the
5 district court for not disturbing it is the plus?
6 MS. SADIN: Because they are integrally related.
7 Remember, my understanding of the stigma plus test is that
8 it was meant to distinguish just plain defamation cases
9 from those which really were Fourteenth Amendment claims
10 based on something the government was doing to you. The
11 plus here is that the government requires you, on pain of
12 felony conviction, to provide the personal information
13 that then is published. It is an integral system. It
14 creates a new class of citizen, a second class of citizen,
15 which has different obligations from other citizens and
16 from which information, personal and otherwise private
17 information, is extracted and then posted. Private
18 citizens do not have to tell the State where they live at
19 all times. They don't have to tell the State when they
20 are leaving. They don't have to provide photographs
21 repeatedly.
22 QUESTION: Suppose we didn't have the posting,
23 we just had the register, and you had to tell those things
24 that you ordinarily wouldn't have to tell the State.
25 MS. SADIN: It would be a different argument.

1 That -- that's the plus.

2 QUESTION: Thank you, Ms. Sadin.

3 General Blumenthal, you have 4 minutes

4 remaining.

5 REBUTTAL ARGUMENT OF RICHARD BLUMENTHAL

6 ON BEHALF OF THE PETITIONERS

7 MR. BLUMENTHAL: Thank you, Mr. Chief Justice.

8 Following Justice Ginsburg's question, there

9 really is no plus here. The point is the registry has not

10 been challenged. The registry existed before the posting,

11 the publication, making this information available. It

12 exists now. If the order were not in effect, even without

13 the requirement in the law that there be Internet

14 publication, an ordinary citizen could do what The

15 Hartford Courant did and file an information -- Freedom of

16 Information request. The Internet requirement is like a

17 Freedom of Information form of law, and it is unrelated in

18 the way that Paul v. Davis says it must be related to the

19 supposed stigma.

20 Even if this Court were to find there's a

21 defamation -- and by the way, Connecticut law has never

22 recognized defamation by implication. But even if there

23 were, Paul v. Davis says that as a result of the action

24 complained of, a right or status recognized previously

25 under State law must be distinctly altered or

1 extinguished.

2 In this instance, there was no pre-existing

3 right not to register. In fact, individuals -- sex

4 offenders were required to register, and that obligation

5 continues to exist afterward. And so what this Court

6 would do by accepting the Second Circuit's decision is, in

7 effect, to constitutionalize tort law in the way that it

8 has declined to do in Paul v. Davis, Siegert v. Gilley,

9 where again it insisted on some causal link between the

10 defamation and the supposed loss of right and status. And

11 that is utterly lacking here.

12 The supposed harms -- there's nothing in the

13 record about housing, employment, any other harm that

14 results from this supposed stigma, and the stigma itself,

15 to go to the Chief Justice's question, has to be false in

16 order to constitute defamation. This Court said so in

17 Codd v. Velger, and that is plainly not true here because

18 all of this information, particularly as to the convicted

19 offense, is absolutely truthful and leaves to

20 Connecticut's citizens to make the judgment about whether

21 or not it indicates dangerousness.

22 The disclaimer -- to clear one other point --

23 very specifically says not only that no assessment has

24 been made, but also that the publication or inclusion of

25 this individual on the website and on the registry is not

1 to be deemed a judgment or a conclusion that this person
2 is dangerous. There's a specific disclaimer as to
3 dangerousness.
4 But even without it, we would contend there's no
5 stigma because all of this information is very simply
6 public record information, and under Siegert v. Gilley
7 particularly, there is no sufficient link between the
8 supposed stigma and any loss of right or status. There
9 simply is no plus here as this Court has interpreted it to
10 exist and must exist under the standard that this Court
11 has set forth.
12 We would respectfully submit that at the very
13 least, the plus, or the loss of right or change of status
14 must arise out of the same action or flow from it in some
15 way. And here plainly the information that's conveyed
16 accurately and truthfully on the registry does not in any
17 way cause the registration. It does not result from the
18 registration. The registration continues to exist now and
19 would continue to exist even after the Internet is taken
20 off -- is -- come down because of the court order.
21 So we respectfully submit that the court should
22 be reversed. Thank you.
23 CHIEF JUSTICE REHNQUIST: Thank you, General
24 Blumenthal.
25 The case is submitted.

(Whereupon, at 12:05 p.m., the case in the above-entitled matter was submitted.)