

# How a 1986 Psychology Today article continues to make fools of Supreme Court justices

written by NARSOL | March 28, 2016

By Joshua Vaughn . . . Licensed Professional Counselor Robert Longo has been vocally opposed to public registries for convicted sexual offenders for years.

“I actually met with a group of people in New Jersey and sat across from Megan Kanka’s grandfather,” Longo said.

The 1994 murder of 7-year-old Kanka gave rise to the public disclosure of sexual offender registries through what are commonly known as Megan’s laws.

“I told the grandfather of the young girl, Megan Kanka, who was raped and murdered, that I appreciate what happened to his granddaughter but this law is not going to make people safe,” Longo added. “Those laws did nothing. It didn’t prevent anything.”

That has not stopped an article he co-wrote in Psychology Today 30 years ago from being used to uphold and provide evidence for the “public’s need” for the registries.

“I just think it’s unfortunate,” Longo said. “What can I say?”

“People use statistics and they will twist statistics,” he added. “People are going to take anything that works to their advantage, or twist a quote, to make it work to their advantage and I just think it’s unfortunate.”

## Article

An anecdotal quip of Longo's from the March 1986 article, that up to 80 percent of untreated sexual offenders go on to commit more sexual crimes, has helped shape the modern view of these offenders as being immutable. This is a view that Longo opposes, and he has spent roughly four decades treating and rehabilitating these very same offenders.

"With treatment we were getting these people down to recidivism rates of 20 percent and below," Longo said. "My belief then, as is my belief now, is that treatment should be mandated for these people because we can treat them and treat them successfully, and reduce the amount of sex crimes in America."

The Psychology Today article was the sole reference in a 1988 U.S. Department of Justice field practitioner's guide for treating incarcerated sexual offenders cited by Supreme Court Justice Anthony Kennedy in a 2002 opinion upholding compelled treatment based in part on the "frightening and high" re-offense rate of up to 80 percent for sexual offenders, according to Ira Ellman, a professor of Law at Arizona State University who first noted the connection to Longo's writing in a recent Constitutional Commentary article.

In the same article, in which Longo touted a treatment program he headed at the time to rehabilitate incarcerated sexual offenders at the Oregon State Hospital, he wrote that re-offense rates for untreated sexual offenders could be anywhere from 35 to 80 percent.

Kennedy again referenced the "frightening and high" re-offense rate a year later when the court upheld an Alaska law that subjected offenders who had been convicted prior to the sexual offender registry's creation to placement on the registry.

"Alaska could conclude that a conviction for a sex offense

provides evidence of substantial risk of recidivism," Kennedy wrote in the majority opinion for *Smith v. Doe*. "The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class."

The U.S. Department of Justice now states on its website that the rate at which released sexual offenders are rearrested for new sexual offenses is as low as 3 to 10 percent.

Both of the opinions penned by Kennedy overturned lower court decisions opposing the state laws, according to Ellman.

In the *Smith* decision, the two individuals bringing suit were released from prison in 1990, remained offense-free for more than a decade, and one had been given custody of his daughter after being deemed rehabilitated by the courts, Ellman wrote.

A spokeswoman for the Supreme Court declined comment, stating only that "as a rule, the Justices do not elaborate upon or discuss the opinions of the Court, which speak for themselves."

## **Statistics**

As Ellman points out, *Psychology Today* is not an academic journal and is written for a lay-audience. As such, Longo's article does not provide any citations regarding where the information came from.

"Anything I would have said would have been based on the science at that time and things that were factual and not my opinion," Longo said. "... That statistic, at that point in time, was the best statistic we had at that point in time in the history of the field. That recidivism rate is probably higher than we would say today. I don't think the recidivism rate for untreated sex offenders is necessarily 80 percent. I don't know exactly what it is, but I would say that's a very high estimate."

So, how does this article make its way to be one of the linchpin facts in two Supreme Court cases?

The simplest answer is that the courts just assumed it was true.

"I don't think (the Supreme Court) knew that's where it came from," Ellman said. "The solicitor general filed an amicus brief saying there was an 80 percent re-offense rate and cited a justice department manual. I suspect that Justice Kennedy and the clerks never went beyond that.

"The (solicitor general) has a lot of credibility and he's citing a justice department manual, which you might assume has credibility," he added. "I think they just burrowed the reference from the amicus brief."

Ellman, who clerked for Supreme Court Justice William O. Douglas, said the court staff likely only looked to see if the information was stated in the cited manual, and never checked the veracity of the underlying claim.

"In this case, if you went to the justice department manual ... the justice department manual does say that," he said. "My guess is a clerk checked it that far, but just because the justice department manual said that, the justice department didn't do any independent research on its own."

The editor of the field manual herself, Barbara K. Schwartz, has rebuked the current policies and use of public registries.

In a 2010 essay titled "No More Victims," which Schwartz used as the preface to an updated "Handbook of Sexual Offender Treatment," she called the current public policies "very expensive" and "ineffective at preventing sexual assault."

Schwartz wrote that the policies, like public registries, are counter-intuitive and interfere with the factors known to reduce re-offense rate.

“Having worked in the field of sex offender treatment since 1971, I now feel that I have fallen down the ‘the rabbit hole’ and am watching the Red Queen scream, ‘Off with their head,’” Schwartz wrote. “Is there no end to the counterproductive response to sex offenders and the problem of sexual assault ... If individuals who found inappropriate ways to achieve basic human needs before they committed a sexual assault cannot fulfill their needs after they have offended, is that a setup for reoffending?” (republished from [The Sentinel](#))