

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

Should Sex Offenders Have Civil Rights? – Air Date: 11/14/2005

New laws give government significant powers to track and penalize defendants convicted of sex crimes, even after they have served their time. In some states, offenders can be committed to mental hospitals after they are released from jail if the state believes they are likely to commit further crimes. Other laws require offenders to register with local police or publicize where ex-offenders live, presumably to safeguard young children who live nearby. Join us on this edition of Justice Talking as we talk about the rights of those convicted of sex crimes.

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MARGOT ADLER: From NPR, this is Justice Talking.

UNIDENTIFIED FEMALE: The FBI considers rape the second most violent crime, second only to murder. Rape and sexual assault is, in a sense, the most violent crime that a person can live to remember.

UNIDENTIFIED MALE: It is overwhelmingly a male crime against female victims. Eighty percent of sex crime victims know their offenders.

UNIDENTIFIED MALE: I went to prison for two-and-a-half years and it was horrible being in prison, it was horrible even to my family and all it did was rip the family apart.

UNIDENTIFIED MALE: Did he do the crime? Yes. Did he do his time? He did his time. Should he be a predator? By statute he should. But is he a threat to this community? Chances are, probably not.

MARGOT ADLER: I'm Margot Adler. On today's show, we'll discuss what rights sex offenders should have once they've served their time, and we'll hear an update on where Supreme Court nominee Samuel Alito stands on important issues. Stay with us.

This is Justice Talking. I'm Margot Adler. In the past couple of years, child sexual abuse has been all over the news, from several high profile criminal cases, to the decades-long broad-reaching sex scandal in the Catholic Church. More survivors of sexual abuse are speaking out about their experiences, and more laws are being introduced attempting to protect society from sexual predators. Megan's Law is now almost ten years old. It was named after Megan Kanka, a seven-year-old who was raped and murdered in New Jersey by a convicted child molester. Megan's Law requires states to maintain registries of sex offenders; many of which are online. Prison sentences for sex crimes have gotten tougher and a number of states have laws which let them hold and keep a sexual predator indefinitely after their prison sentence has ended.

Recently in Pennsylvania, a woman's newborn son was taken away from her by the commonwealth because her husband is a registered sex offender. We'll talk about all of these situations on today's show when we ask the questions what rights to sex offenders have? Are their limits to how far communities can go to punish offenders and defend themselves? And is it true to say once a sex offender, always a sex offender? We'll hear from a lawyer who argues that some offenders can be rehabilitated; a rape victim who says that violent sex offenders cannot; and we'll hear the story of a man who moved to Florida to escape the stigma of being labeled a pedophile, only to be discovered by his new neighbors. But first John La Fond, a lawyer and an expert on sex offenders joins us from a studio in Olympia, Washington to help us understand how our country has dealt with sex offenders in the past and how communities are responding to their fears about sexual predators. He is co-editor of the book *Sexually Violent Offenders, Law, Science and Policy*. Welcome, and thank you for coming on the show.

JOHN LA FOND: Thank you, glad to be here.

MARGOT ADLER: When we use the term sex offender, what are we talking about? There are clearly different types of sexual offenses and different levels of sex offenders.

JOHN LA FOND: That's right. And I think that sex offenders really include anybody who's been convicted of a crime that involves conduct designed to gratify their sexual desires. So it can range from violence – assault/rape – to even exhibiting oneself to a young child. So there's a great range of crimes included within that category of sex offenders.

MARGOT ADLER: You've studied the issue of sex offenders for many years. What are the some myths about sex offenders and their crimes and what is some of the misinformation that's out there?

JOHN LA FOND: Well, one of the most interesting first myths is that sex crimes have been increasing over the last 10 or 15 years. In fact, sex crimes increased from about 1976 to 1992, but there has been a precipitous decline in sex crimes in the United States since

about 1992, so the trend is clearly down. That's the first myth, I think. A second myth is that sex offenders are especially dangerous; that once a sex offender you will always be looking to commit another sex crime if the opportunity presents itself. And, in fact, solid research establishes that sex offenders have a relatively low recidivism rate as a group. It is about 13 percent based on the best research which looked at over 23,000 sex offenders for a four to five-year follow-up period. Now the part of the myth that is true is that there is a small group of sex offenders that has a high propensity to re-offend, and this is a group we do have to watch out for very carefully. And perhaps the third myth is that sex offending cannot be treated. The most recent research suggests that at least if sex offenders are motivated, we can offer them treatment that provides them with the tools to actually reduce sexual re-offending and I think we are well on our way to at least helping those sex offenders who want to help themselves.

MARGOT ADLER: Now you said the treatment works. What kind of treatment?

JOHN LA FOND: Well, the treatment that is being used today is no longer the psychological or psychoanalytic therapy in which you talk to therapists. Too often sex offenders have a private logic which allows them to minimize what they have done, to blame the victim for what has occurred. So the first thing to do is to teach them how to think properly about their sex crimes. The second thing you do is to give them tools to avoid being in situations which have led to sex offending in the past or to interrupt sexual fantasizing that has led to sex offending in the past. This is called "relapse prevention." It's borrowed from substance abuse strategies. You simply tell sex offenders you may not engage in certain fantasies, you cannot be around children alone, and if you do find yourself in these awkward situations, here's how you get out of them as fast as possible. And, finally, you teach them, I think, to have more victim empathy – to understand the significance of the harm they have caused their victims to suffer. And, finally, in some cases, either chemical castration or drug therapy is appropriate.

MARGOT ADLER: Now do you have statistics on the rehabilitation of sex offenders?

JOHN LA FOND: Researchers looked at a number of studies involving thousands of sex offenders who received treatment. And they found that the recidivism rate for offenders who did receive treatment and participated in treatment was reduced from 17 percent to 10 percent. So that is a significant reduction in new sex crimes that were not committed because of treatment.

MARGOT ADLER: Now how has the criminal justice system dealt with sex offenders over time and how has that changed?

JOHN LA FOND: Sex offenders are getting much harsher sentences. State legislatures throughout the country have increased the penalties for sex crimes. More sex offenders are being sentenced to longer sentences, more sex offenders are serving more of their sentences. As a result, sex offenders are literally the second largest growth industry in the United States prison system.

MARGOT ADLER: And I'm assuming the first is drug offenses, so it's second after drug offenses. Are most of these men? Are most of these minorities? You know, parse that out for us.

JOHN LA FOND: Ninety-nine percent of sex offenders are men. It is overwhelmingly a male crime against female victims. Secondly, the amazing statistic in my mind is that 80 percent of sex crime victims know their offenders. Most of the sex offenders in prison are white males and increasingly, however, we are finding that females are being reported as sex offenders and though they comprise perhaps two or three percent of sex offenders today, I expect that number to increase slightly in the years to come.

MARGOT ADLER: Why?

JOHN LA FOND: I think there's more recognition that females can and do commit sex crimes. I think there'll be more observing and reporting mechanisms in place. And finally, I think the culture will change its view of the harm done to male victims when a female sex offender commits the crime.

MARGOT ADLER: Now, what strategies do you think are most effective in monitoring sex offenders?

JOHN LA FOND: I generally think that having one-size-fits-all strategies is a very wrong approach to preventing more sex crimes. So strategies like sex offender registration and community notification, in my mind, are costly and have not been demonstrated to reduce sex crimes.

MARGOT ADLER: So you don't think there's any evidence, for example, that Megan's Laws have lowered the incidents of sex abuse?

JOHN LA FOND: There's no research establishing that Megan's Laws either prevent sex crimes or help in their solution and prosecution.

MARGOT ADLER: Now there has been clearly an effect of Megan's Law on the public's awareness of sex crimes.

JOHN LA FOND: Megan's Law certainly causes more public awareness that sex offenders are being returned to their community, and the reality is, by the way, that most sex offenders will return to the community.

MARGOT ADLER: Now there have been a lot of books that have analyzed rape and sex crimes, and one common thread is that rape really isn't about sex – it's about power, about anger, about control. But what do we actually know about why people commit sex crimes?

JOHN LA FOND: There are a number of theories as to why people commit sex crimes. One, of course, is what might be called a feminist theory that culture, patriarchy and a general

hatred of women lead men to seek power over women, to dominate them and to subordinate them. There is certainly some evidence to support that view. Other theories hold that sex offenders have been abused as children, and simply learn this behavior and then do it as adults. Thirty percent of sex offenders report that they were sexually abused as children.

On the other hand, most individuals who were abused as children do not become sex offenders, and women who were overwhelmingly victimized as children do not, generally speaking, become sex offenders. And, finally, of course, there is the possibility that we are dealing with some form of mental disorder or pure psychopathology. That is to say these individuals simply have a deviant sexual preference, we don't quite know why, or that they are simply bad people who take the opportunities, whenever they find them, to take what they want and have no respect for the rights of others.

MARGOT ADLER: Some states have put in place civil commitment statutes, I guess, that allow offenders, after their prison sentence has ended, to be kept indefinitely. For example, in Washington, where you live I gather. I'm wondering what you think of those policies.

JOHN LA FOND: I have been a critic, generally, of civil commitment statutes because I do not view them as bona fide therapeutic schemes. I think most of these laws are functioning as long-term incapacitation statutes under the guise of treatment. The states that have them tend to commit many more sex offenders than initially projected, keep them there for many, many years, and don't release as many as they thought they would. Now the public may applaud this, but these statutes are extraordinarily expensive. They cost at least \$100,000 per person per year to keep a sex offender in a commitment facility, and that does not include litigation costs and capital construction costs. I think we should take the money that is spent on a relatively few number of sex offenders – about 4,000 currently – and use those resources to actively, aggressively, intensively monitor a much larger number of sex offenders when they return to the community from prison.

MARGOT ADLER: John La Fond, thanks so much for joining us.

JOHN LA FOND: Thank you.

MARGOT ADLER: John La Fond has written extensively about the control and treatment of sex offenders. He joined us from Olympia, Washington.

Coming up, the president of the National Center for Missing and Exploited Children, and a professor of psychiatry and behavioral sciences talks about how we can best protect ourselves and our families from sexual predators. And we'll hear about a woman who was fighting to get her newborn back from the Commonwealth of Pennsylvania. Her baby was taken from her because her husband is a registered sex offender. Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Two Florida girls, Jessica Lunsford and Sarah Lund, were abducted and killed by convicted sex offenders. Since then thousands of people have flocked to Florida's sex offender registry website hoping to find out whether offenders are living in their neighborhoods. Proponents say the site is a crucial tool for educating the population, but it's having some unintended consequences too. Reporter Judith Smelser from WMFE in Orlando has this report.

JUDITH SMELSER: In a quiet subdivision in Rockledge, a small town on Florida's Atlantic coast, Bill and Joanne Pratt are making dinner with their two sons. It's a typical suburban scene, but the Pratt's are far from a typical family. In 1999, Bill Pratt was arrested in New Jersey for molesting two boys.

BILL PRATT: I went to prison for two-and-a-half years and it was horrible being in prison, it was horrible even in my family, and all it did was rip the family apart. After much soul searching, Joanne decided to stay with her husband. While he was in prison, she moved with her two boys to Florida hoping to start a new life that Bill could join after his release.

JOANNE PRATT: My little nine-year-olds... you know, about every day, three kids would be calling him for play dates, and I was so... finally he was happy again. Finally he was smiling and knew that our... thought that our future was bright.

JUDITH SMELSER: When Bill moved down, he was listed on Florida's sex offender website. In New Jersey, he'd been classified as a low-risk offender and his case was not made public. But Florida doesn't have a classification system; all sex offenders are automatically listed online. One of the Pratt's new neighbors found Bill's listing, printed out his information and began passing it out near their children's school. As a result, Joanne says her nine-year-old has lost every friend he had.

JOANNE PRATT: Children that he'd been friends with for two years were telling him that they can't play with him at all anymore. He can't even go to their house. And this is just heartbreaking and I have watched my outgoing little child who is developing his sense of confidence in his ability to be sociable and make friends become more introverted, spend time alone playing video games.

JUDITH SMELSER: The Pratts are angry about the website's toll on their family, and they also feel that the sex offender notification laws were born out of a basic misconception on the part of lawmakers and the public. Many people believe that sex criminals are extremely likely to re-offend, but in fact, a recent Department of Justice study found that in the first three years after release from prison, only 5.3 percent of sex offenders were rearrested for a new sex crime. Other studies have found recidivism rates to be slightly higher, but still low compared to most other types of crimes. The Pratts and others in their situation want Florida to adopt a system like New Jersey's that puts only the highest risk offenders on a website. Many child advocates agree that's a good idea, but they are

adamant that parents should have access to some information about sex offenders despite unintended consequences like what happened to the Pratts. Carolyn Atwell-Davis is the legislative director for the National Center for Missing and Exploited Children in Virginia.

CAROLYN DAVIS: It's unfortunate and certainly not an intended consequence that children in the families of sex offenders are harmed by this, but there are so many children out there that are victimized every single day. We are talking about crimes with lifelong mental and physical consequences for these victims, and I think that that really is more important.

JUDITH SMELSER: Sergeant Keith Hubbard of the Orange County Sheriff Sex Offender Squad agrees. When it comes to protecting kids, he says, knowledge is power. But he thinks Florida's website is an imperfect tool for providing that knowledge. He recalls a 19-year-old offender who was listed on the site as a sexual predator because his two victims were under 16, but Hubbard knew there was more to the story.

KEITH HUBBARD: He went to the beach and there's actually a statement right there written by one of the girls that they went with him. Okay, this was not... he did not abduct these girls, they picked him up. Did he do the crime? Yes. Did he do his time? He did his time. Should he be a predator? By statute, he should. But is he a threat to this community? Chances are, probably not.

JUDITH SMELSER: That offender eventually committed suicide because of the pressure brought on by his predator status. All in all, Hubbard feels the imperfections in the sex offender website are offset by the good he believes can come from community notification. But back at the Pratt household, Bill and Joannee argue there's no proof that notification laws have prevented any crimes, and they hope some of the problems with the laws can be corrected before more families go through what theirs has. For Justice Talking, I'm Judith Smelser.

MARGOT ADLER: This is Justice Talking, I'm Margot Adler. On today's show we are looking at how society deals with sex offenders, why people commit sex crimes and what should be done to prevent further abuse. To talk with me about the current laws and what we know about sex offenders is Ernie Allen. He is the president and CEO of the National Center for Missing and Exploited Children. He was co-founder of the Center, which has helped recover 90,000 missing children. He joins us from Washington, D.C. Welcome, Ernie.

ERNIE ALLEN: Thank you, Margot.

MARGOT ADLER: Also joining us is Bruce Winick. He is a professor law and a professor of psychiatry and behavioral sciences at the University of Miami. He is in a studio in Miami, Florida. Thanks for being with us.

BRUCE WINICK: Happy to be with you.

MARGOT ADLER: I'd like to ask you both: Megan's Law has now been in effect for almost ten years – what's been the effect? Ernie, you first.

ERNIE ALLEN: Well, I think you have to look at Megan's Law as a part of a larger sort of legal continuum. In 1994, Congress passed the Jacob Wetterling Act which mandated every state have a system for registering sex offenders. Megan's Law provided a system for providing notification to the community of sex offenders. I think on balance, the impacts have been positive. Both laws are very important. We think the greatest challenge is, frankly, implementation and enforcement. There are 563,000 convicted registered sex offenders in this country today, more than 100,000 of them are non-compliant, and there's great disparity between states in terms of how these systems are implemented.

MARGOT ADLER: Bruce, do you believe that Megan's Law has, in fact, decreased the number of sex offenders?

BRUCE WINICK: I'm not sure that I think it has. I think the problem is that, you know, it's a good thing to give the community notice about the location of a sex offender in the community; it's a good thing for parents to be able to take steps to protect their children in that regard. But I think the community and the parents need a lot more than Megan's Law gives them. I think we have to think more creatively about how to supervise sex offenders in the community and to prevent future violence.

MARGOT ADLER: I'm wondering if you think that Megan's Law and the various registrations around the country feed into the notion that sex offenses by strangers are more the rule rather than the exception.

ERNIE ALLEN: I think the reality is we know that children are at greatest risk from the guy across the street, from the soccer coach, from the school employee, from the youth group volunteer. In the case of Megan Kanka, the man who murdered Megan Kanka wasn't a stranger. He was her neighbor. And I've had victim parents say to me that if there's a dog on our street who has a propensity to bite children, I want to know it so I can tell my child to stay away from the house. It doesn't mean kill the dog, but it's just a matter of giving parents the kind of knowledge and awareness that they need so they can empower their children. So I think Megan's Law is even more important as it relates to people we know.

MARGOT ADLER: Ernie Allen is the president and CEO of the National Center for Missing and Exploited Children. Bruce Winick, do you agree? Do you think that Megan's Law works in that way?

BRUCE WINICK: Well I do think that Megan's Law seems to proceed on an assumption that most sex offenders are strangers, and as we all agree, most sex offenders are intimates,

are people that are known to the individual. I think there are a number of criticisms that can be made of Megan's Law. One of them is that in many states we tend to consider all sex offenders the same, and they are placed in the same category of risk, and that never changes. It seems to me that what we want to do in this context is recognize that sex offenders are different. Some are quite dangerous, some are not so dangerous. If we take, for example, the case of maybe a 17-year-old boy who's had sex with his 16-year-old girlfriend and is convicted of statutory rape – under some laws, he would be considered a sex offender. It seems to me that sex offender should be treated quite differently than a child molester, and yet we don't do that.

MARGOT ADLER: There is a Pennsylvania case involving a sex offender, his wife and their newborn baby. Joining me to talk about this case and its implications is Mary Catherine Roper. She is a staff attorney for the American Civil Liberties Union in Philadelphia, and she is the lead attorney working on this case. Mary Catherine, thanks for coming in.

MARY CATHERINE ROPER: Glad to be here.

MARGOT ADLER: First, why don't you just briefly tell us about the case.

MARY CATHERINE ROPER: Well, I represent Melissa Wolfhawk and three years ago, Melissa married DaiShin Wolfhawk, who 23 years ago pleaded guilty to sex offenses involving his 11-year-old daughter and also some unrelated teenage girls. The Wolfhawks do not live together, Mrs. Wolfhawk has just given birth to a baby boy, and that boy has been taken by the courts of Schuylkill County on the grounds that they simply don't believe that she will abide by their direction to keep the child away from her husband.

MARGOT ADLER: And what arguments are you making in the case?

MARY CATHERINE ROPER: This is an incredibly extreme action. This is a newborn baby who has now been taken from his mother for a minimum of six months. And in justification for this really extreme action, the county has pointed to nothing except the fact that she married a sex offender and remains married to him. Although she does not live with him, they say that there is some risk of a re-offense there. Mr. Wolfhawk, by the way, served his time in prison. He went to prison for ten years and has never been accused, much less convicted, of any sort of crime against any person since then.

MARGOT ADLER: Is this the first case of its kind? Is there a precedent?

MARY CATHERINE ROPER: It's not at all the first case of this kind. I mean, one of the reasons that we were so interested in this case is that, in fact, this happens all the time. There are women all over this state, at least, who are fighting to regain custody of their children who have been taken because of what their husbands did.

MARGOT ADLER: Now one of the things I don't understand is the husband was convicted for sex offenses against females, this new baby is a boy. The other child that was taken

away, I gather, from her was a boy. So I don't understand why – given that this guy is heterosexual clearly – why they would think this is a problem.

MARY CATHERINE ROPER: Well, that is one of the problems – not just in this case, but I think generally – that the county isn't looking at that level of analysis. They basically say he's a sex offender; he's always a sex offender; he's a danger to every child he could possibly be near. And they don't look to closer distinctions like that which any one who is familiar with the issues around recidivism would tell you that those are very relevant issues.

MARGOT ADLER: I'd like Bruce and Ernie to respond. What do you think about this case? Let's start with you, Ernie.

ERNIE ALLEN: Well, I think it's a difficult case. We work with child protective services all over the country, and certainly have never known of a circumstance in which social services agencies aren't very reluctant to remove children from their parents, and in fact they usually view it as a last resort. I am certainly not aware of the totality of the facts and the circumstances in this case. What I've been asked many times is, does this mean that convicted sex offenders are not allowed to father children or be parents. My answer to that is no, that having normal family lives is really important.

The typical child molester begins molesting by the age of 15. Saying that a child molester could never marry and never have children is a source of some concern. However, I know how reluctant these child protective services agencies are to take children, particularly newborns, away from their mothers. In most instances, what we found ourselves arguing was that a tragedy had happened and they should have done it— why didn't they act? So I'm certainly not going to second-guess, and my assumption is there are many more facts at play here.

MARGOT ADLER: Bruce Winick, your response.

BRUCE WINICK: It seems to me this case illustrates the problem I've been raising of treating all the sex offenders alike and making blanket assumptions that all sex offenders are dangerous. Here's someone who apparently paid his debt to society and has been discharged and apparently hasn't been a re-offender for 23 years. Gee, you know, if it was a murderer who served his time and was released, we wouldn't dream of interfering in his private family life on the ground that he might murder his child. It just seems to me to be absurd.

It makes sense for us to have more individualized determinations of risk and to predicate these kinds of responses on them. I do think – and I don't know much about the facts of this case other than what I've read in the newspaper – it just seems to me to be an egregious interference with that family's constitutional right to bear children, to the care and custody of their child. I could see it if there was a detailed determination that this individual presented a concrete risk, but I don't think that's happened here.

MARGOT ADLER: Is that what you are arguing, Mary Catherine, that they have a constitutional right that's been violated?

MARY CATHERINE ROPER: Well, this case is even more extreme because, you need to understand, we are not arguing for Mr. Wolfhawk's right to have custody of his child, but for the right of his wife who does not live with him and has agreed to keep a separation between him and the child until the government tells her that that would be all right with them. So not only are we talking about the right of a sex offender to become rehabilitated and reestablish himself into some sort of normal membership in society, but now we are talking about a woman who is being stigmatized and punished simply because of her association with this man. She has never been found to have harmed a child, and in fact he's never been found to have harmed a child who is in her care. And yet the assumption is for her, and for many other women, that because she's married to him, because she associates with him, that she's not a fit parent.

MARGOT ADLER: What happens next for the baby and the family?

MARY CATHERINE ROPER: Presently, this baby has been declared a dependent – that means being without adequate parental caring control – by a court in Schuylkill County. He is placed with a foster family and he will be there for a minimum of six months unless we manage to get some relief on appeal before then. His mother is allowed to visit with him, but she lives three hours away in Maryland, and she's been offered the opportunity to visit with him once a week. This is an absolute tragedy in the life of this infant and his mother. This is a period of bonding that they are not going to be able to regain.

MARGOT ADLER: Mary Catherine, thank you so much for being with us. Mary Catherine Roper is a staff attorney for the American Civil Liberties Union in Philadelphia.

Coming up, more of our conversation with Bruce Winick and Ernie Allen on the rights of sex offenders after they've served their time – what works, what doesn't, and whether we should really be afraid of the guy next door. Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Every parent fears something happening to their children. Perhaps one of the worst fears is that their child will fall into the hands of a pedophile. Every woman who has walked down a city street alone at night, has worried about being attacked by a rapist. And the reality of sexual abuse in our culture and the fear of it have lead to legislation which tries to keep us safe from sexual predators. But do these laws work? Are we safer? I've been talking with Ernie Allen and Bruce Winick about this uncomfortable but important topic. Ernie Allen is the president of the National Center for Missing and Exploited Children and Bruce Winick is a law professor and a professor psychiatry and behavioral sciences at the University of Miami.

On today's show, we've been talking about the ways the government has been trying to address the concerns of communities about sex offenders. There's an organization called Generation Five, which is taking a radically different approach. Generation Five's mission is to end the sexual abuse of children in five generations. Staci Haines is the founder and executive director of Generation Five, and she joins us by phone from San Francisco. Welcome, Staci. Staci, tell us about how your organization deals with the problem of child sexual abuse.

STACI HAINES: What we've looked at is where child sexual abuse is happening the most. And while it's understandable that people want to respond and react to prevent offending or just someone who has offended, the vast majority of child sexual abuse happens in our families and our intimate networks in our community. The number of offenders who go through the criminal legal system are mostly stranger molesters. Really the closer one is in blood relation to their victim, the less likely they are to go through the criminal legal system. And we can kind of understand this if we look at other issues of intimate violence, like domestic violence. Often people don't want to turn their loved ones over to the police or to the system. So what Generation Five does is we say okay, where child sexual abuse is happening most is the place where we can address it and respond to it and prevent it in the most effective way.

MARGOT ADLER: So can you give me some concrete examples of what you might tell a family, and what in fact a family might do to change the situation.

STACI HAINES: It's complex, but I can give you an example. One of the women who we trained as a community leader, also works in a social service agency. A case of child sexual abuse was forwarded – you know, came out – and basically she spent the next 48 hours calling in as many people as she could who were in relationship with that family. And what she secured were people who were willing to support the grandmother, which is where the child was going to go live. She pulled in people who were willing to both support, confront, and hold accountable the offender – and he was going to go into a treatment program – but really pulled in relationships close to him. And then a number of neighbors and church members who said, you know what, we're willing to get educated on the topic. We want to protect this family by supporting them and educating the rest of our wider community so they don't get ostracized or shamed in any particular way.

MARGOT ADLER: Now, why do you think there's so much abuse in our society?

STACI HAINES: I think it's a complicated question. I mean, I really look on one hand and I say, you know, violence is offered as a solution over and over again. We're a violence-oriented culture. And so on one hand, I ask why we are so surprised that this type of violence happens. In many ways, it's the norm and not the exception. I also think that, you know, it's still very recent that children were thought of as property, and even women and children thought of as property. And we are in a social context still that says power over is the model of power that we're going to use. And we really say, as horrible as child sexual abuse is – and I can say that from personal experience too – that as horrible

as it is, what's sad is it's not abnormal, it's the norm. So the question we ask at Generation Five is what is happening inside of our communities and inside our social system that keeps creating sexual offenders and keeps creating more child sexual abuse? So we need to respond to incidences, and at the same time look to social norms we need to interrupt to actually create prevention.

MARGOT ADLER: Bruce, I'd like you to respond and ask you what you think as both someone involved in law and psychiatry of Generation Five's approach.

BRUCE WINICK: I like it. It sounds good to me. I think we need to be more preventative in this area; I don't think we've done enough in that regard. And I like the idea that this is an approach that sees the community, the family, the social network as the prime interveners here. You know, we can't solve every problem with the criminal justice system – it's too remote often. Of course, we need it. I'm not arguing against it. But I think the idea of involving the community in these ways is just great. If we kind of think back to olden times when we were living in the village, the tribe, you know, hunting and gathering societies – if someone acted out in a deviant way, we wouldn't ostracize them. We would communicate with them effectively; the community pressures would be brought to bear to reintegrate them into the community. We need to do more of that, and so I would applaud this approach.

MARGOT ADLER: Ernie, what do you think of it?

ERNIE ALLEN: Well, I mean, I like the prevention focus, I like the broad-based mobilizing of the community. I have to confess that I have some real concerns to what I hear as treating the act as a symptom or something other than what it is. I mean, I think sexual offenses against children are a crime. If you think about the way, for example, the church mishandled this problem for decades – the fundamental crux of the inadequacy of their response was they viewed it as sin and brought together the whole family to try to work with this sinful person and not as crime. So to the extent that Generation Five mobilizes communities and involves people and creates social support structures and enhances awareness, I think that's great. But I think it's a fundamental problem if we explain away behavior that is epidemic in this society and is fundamentally criminal in nature. I don't think we can remove the criminal justice system or legal sanction from this problem.

MARGOT ADLER: Do either of you think it's possible to end the sexual abuse of children in five generations?

ERNIE ALLEN: Well, I hope it is. I certainly think one of the great challenges we have is to bring this issue out of the shadows. This is still a problem after all of the efforts and all of the progress that is, in my judgment, still one of hidden victims. This is something that good people don't think about, that good people don't talk about, but the reality is the perpetrators of these crimes look pretty much like the rest of us. They're doctors and lawyers and corporate executives and prominent citizens. This is not something that is relegated to the lowest economic rungs of society and we as a society have to come to grips with it.

BRUCE WINICK: I would agree with Ernie. We need to bring it out of the shadows. This is a problem that I would compare, in a way, to domestic violence, which a generation or so ago we kind of weren't aware of the extent of it. And there's been a lot of community education, a lot of change in our social norms, and I think if we continue to do that in the way that this San Francisco project is doing with more of an emphasis on prevention, I would particularly target adolescent sex offenders as a very good category for intervention, for treatment intervention. I'm not advocating at all that we discontinue with the criminal sanction, of course, but I think we need to supplement it in these ways. And if we do, will we totally eradicate the problem? I doubt it. But we could put a serious dent into it and that's what we should try to do.

MARGOT ADLER: Staci Haines, thank you so much for joining us.

STACI HAINES: Thank you very much.

MARGOT ADLER: Staci Haines is the founder and executive director of Generation Five, and she joined us by phone from San Francisco.

Kellie Greene is the director of Speaking Out About Rape. She's a rape survivor, who is a victim rights activist. I called her to find out what her views were about convicted sex offenders, and I asked her how long the prison sentence should be for a rapist.

KELLIE GREENE: I think it should be life.

MARGOT ADLER: You think it should be life.

KELLIE GREENE: Yes.

MARGOT ADLER: And why?

KELLIE GREENE: Because the FBI considers rape or sexual assault the second most violent crime, second only to murder. So rape and sexual assault are in a sense the most violent crimes that a person can live to remember. And we're giving these people that commit this crime really light sentences. I mean, the average sentence that they serve is anywhere from five to nine years, which isn't long at all, and we're keeping people who commit murder in prison for life. And they're pretty much the same kind of offense but you just live. And so I think that they need to be kept in prison for life. If they are released, we need to have better management with law enforcement, better management of the offenders once they are released out into the society.

MARGOT ADLER: Ernie, is she too harsh?

ERNIE ALLEN: Well, I don't think she's too harsh. I think there is no question that these offenses are not viewed severely enough. Historically, the penalties have not matched the severity of the crime. So whether it should be life, I think certainly we need a range

of sentences tied to the severity of the crime, but in my judgment, overwhelmingly, the sentences have not been severe enough and have not paid proper deference to the seriousness of this violent crime. This is more an act of violence than a sexual act.

MARGOT ADLER: Bruce, what do you think?

BRUCE WINICK: I would agree rape is a horrible crime, it is a crime of violence, it should be treated seriously. I don't think I would say that we should in a blanket way have life sentences, however, for all rapists. Once again I would say we need to be more discerning. Certainly for repeat offenders, for multiple offenders, we should have life, but for first offenders I think we should be more open to the possibility of rehabilitation and redemption for those who we can motivate in that direction.

MARGOT ADLER: I want to thank you both for talking with me about the tough and emotionally charged issues surrounding how our society deals with sex offenders and the reality of sexual abuse. Ernie Allen is president and CEO of the National Center for Missing and Exploited Children. He joined us from a studio in Washington, D.C. Thank you so much, Ernie.

ERNIE ALLEN: Thank you, Margot.

MARGOT ADLER: Bruce Winick is the author of the book *Protecting Society from Sexually Dangerous Offenders: Law, Justice and Therapy*. He's also a law professor and a professor of psychiatry and behavioral sciences at the University of Miami. He joined us from a studio in Miami, Florida. Thanks so much for coming on the show.

BRUCE WINICK: My pleasure, Margot.

MARGOT ADLER: In our continuing look at Supreme Court nominee Judge Samuel Alito, I invited constitutional lawyer Lawrence Tribe to talk with me about Judge Alito's ideas about the separation of powers in government. Welcome, Larry.

LAWRENCE TRIBE: Very good to be here, Margot.

MARGOT ADLER: In a recent op. ed. in the Boston Globe, you seem to say that more important than asking Judge Alito what his position is on Roe v. Wade or states rights, is to look at what you call "the window through which Alito gazes at the social world." Talk about that.

LAWRENCE TRIBE: Well I was interested in the phenomenon that in confirmation hearings for people like John Roberts, there has developed a style of answering almost any imaginable question in a way that is utterly uninformative. That is, without intending to be deceptive, a nominee can say that he or she believes in the importance of tradition and stability and precedent, and on the other hand say that when decisions are deeply wrong

and unsettling in themselves, they should be reexamined. Of course, the nominee believes in some aspects of privacy but of course the nominee won't say very much about how far that goes.

MARGOT ADLER: What do we know about Judge Alito's thoughts about presidential power and the relationship between the Supreme Court and the president?

LAWRENCE TRIBE: In particular there was a decision upholding the power of Congress to create and provide a measure of independence for special prosecutors like Kenneth Star and so on. The question that the court had before it in a case called *Morrison vs. Olson* was whether, good idea or not, it was permissible for Congress to put that kind of restriction on the president by saying that suspected crimes high in the executive branch are going to be investigated by someone who cannot be simply removed willy-nilly for political or partisan reasons by the president or by the president's appointee, the attorney general.

Eight to one the Supreme Court upheld the power of Congress to do that. The only dissenter was Justice Scalia, and in an important writing by Judge Alito in his capacity as a thinker about these matters he said: "It was a lonely dissent by Justice Scalia, but Scalia was right." That anyone who performed an important executive function has to be answerable to and removable by the president, and that includes special prosecutors. Now if that view were to prevail, the view that says the president can't be limited in that way, which carries the natural corollary that perhaps with respect to matters like torture, the president can't be limited by the courts either, is a view that I think needs to be seriously explored with Judge Alito. Because if that is his view, I think it pushes the country in a very dangerous direction.

MARGOT ADLER: What do you see as the role of the legislative branch and Congress in particular, from Judge Alito's perspective?

LAWRENCE TRIBE: Well I think Judge Alito is not as deferential to Congress as a number of members of the court have been, certainly not as deferential as the so-called liberals on the current court are. He tends to have a view that Congress must be very tightly constrained by reading the powers that are given to it, like the power to regulate interstate commerce, the power to enforce the Fourteenth Amendment, in a very narrow way. He suggested in one case that Congress doesn't even have the power to forbid the possession or transfer of machine guns within a state, even though that, under the view Justice Scalia was later to express in a concurring opinion in the marijuana case, would almost certainly be within Congress' power because of its relationship to Congress' authority to regulate it or state commerce in machine guns. That's a very narrow view of Congress' power, and it's a view that if ultimately represented by a majority of the Court would turn the clock back to where it was prior to 1937 in terms of national power—something that in an interdependent world where national authority really has to be more capacious, I think would represent a dangerous trend.

MARGOT ADLER: Larry Tribe, thanks so much for talking with me.

LAWRENCE TRIBE: Thank you.

MARGOT ADLER: Lawrence Tribe is a constitutional scholar and the Carl M. Loeb University Professor at Harvard. I'm Margot Adler.
