

P R A X I S

Where Reflection & Practice Meet

VOLUME 13
SPECIAL ISSUE

Social Work and the Law: An Interdisciplinary Lens

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PRAXIS

Where Reflection & Practice Meet

VOLUME 13
SPECIAL ISSUE

Social Work and the Law: An Interdisciplinary Lens

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Mission Statement

The School of Social Work at Loyola University Chicago created *Praxis: Where Reflection & Practice Meet* to give voice to the scholarly work of students and alumni. Our mission is to encourage and support the development of social work knowledge that will enhance the lives of the clients we serve, embody the humanistic values of our profession and promote social justice and care for vulnerable populations. *Praxis* respects and welcomes all viewpoints.

Editorial Policy

Praxis is published by students in the School of Social Work at Loyola University Chicago. The editorial board is composed of masters and doctoral social work students. The board encourages students and alumni of the School of Social Work to submit papers that provide insight into clinical, policy, research, education and other areas relevant to social work practice. Submissions are accepted throughout the year. Articles should be no longer than 20 double-spaced pages and submitted as a Microsoft Word document file (.doc or .docx). All identifying information, including contact information, should be on a separate page. Responsibility for accuracy of information contained in written submissions rests solely with the authors. Opinions expressed in the journal are those of the authors and do not necessarily reflect the views of the School of Social Work or the Editorial Board.

All inquiries and submissions should be directed to:
Editorial Board, *Praxis: Where Reflection and Practice Meet*
School of Social Work, Loyola University Chicago,
820 N. Michigan Avenue, Chicago, Illinois 60611.
Telephone: (312) 915-7005;
website: <http://luc.edu/socialwork/praxis/contactus.html>
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EDITORIAL

Empowering Clients By Bridging Professions:**A Call for Collaboration**

Social activist bell hooks once said, “There must exist a paradigm, a practical model for social change that includes an understanding of ways to transform consciousness that are linked to efforts to transform structures.” hooks’ demand for transformation signals the tenets of social justice: that everyone deserves equal rights and opportunities in all areas of life, including health, housing, education, and employment. As hooks describes, however, social justice cannot and will not become a reality for the most vulnerable of our population until both our society’s structures and mindset have changed.

As a social work and legal advocate, I have found that the most effective way to empower my clients and ensure a positive outcome has been through the use of my interdisciplinary training in multiple disciplines and subject matters. Whether advocates choose to pursue their own training in multiple fields or choose to collaborate with a professional peer from a different specialty, advocates can empower their clients by helping them navigate the ideas and structures that will inevitably interact with each other.

Each discipline transforms our consciousness and structures in different ways. For example, social work training in mental health can help recognize and limit the impact of stigma on an individual struggling with a substance use disorder as they attempt to reenter society after a period of incarceration; for that same individual, legal training can help him or her navigate or even change the systems and institutions that have played a significant role in his or her life. Similarly, a social worker may bring a deeper understanding of an adolescent’s emotional and cognitive wellbeing to a court proceeding in order to assist the attorneys and judge navigate complex legal rules to come to an appropriate decision about the child’s future. For the migrant mother seeking shelter from an abusive husband, her advocate’s understanding and ability to navigate the social service, immigration, and legal systems can be crucial to the outcome of her client.

Too often in my own work have I heard a client describe multiple referrals to new

practitioners and agencies, few of which have spoken to each other about the client’s specific needs. More often than not, my clients have faced negative outcomes due to the inability of various fields to tear down their silos and collaborate. Each profession contains a unique combination of skills and knowledge that can affect the transformation of consciousness and structure in different ways; however, when working together, each profession can become more powerful and true social change can occur.

Because of this critical need for professions to collaborate, *Praxis*, for the first time in its history, opened its publication doors to work created by Loyola students and alumni from multiple disciplines in this Special Issue. The articles in this edition are authored by current students and practitioners who have studied and worked in the legal or social work professions. Not only are their main professions diverse, but the authors also bring an incredible mix of interests and passions that highlight the diverse yet intersecting needs of our most vulnerable populations: children, women, refugees, migrants, and those impacted by the criminal justice system. These authors have allowed their readers to understand the worlds of these populations and the systems they encounter. When read as a whole, this entire edition of *Praxis* highlights a larger dialogue and request for transformation that is required to ensure social justice. Without this bridge between professions, none of our clients can be truly empowered.

Each of these articles embodies the words of bell hooks. Each author attempts to transform their readers’ consciousness and the societal structures highlighted by their articles. I hope that by bridging professions on paper, each reader will be able to bridge professions in their own work in order to transform consciousness and structures, promote social justice, and, ultimately, empower each and every client.

Amanda M. Walsh, MSW
Juris Doctor Candidate
Editor-in-Chief

Wrongful Conviction: Special Challenges for Juvenile Exonerees

A Legal and Social Work Perspective

Victoria Carmona Fehr, JD, MSW

“The juvenile should not be deprived of the opportunity to achieve maturity of judgment and self-recognition of human worth and potential” (Green, 2011, p. 1; *Graham v. Florida*, 2010, p. 2032).

Introduction

The court systems are part of an adult world and juveniles sentenced for crimes, due to their ages and development, face extreme difficulties at any stage of the judicial process. Even when a juvenile is exonerated, he or she still faces additional challenges, both emotionally and procedurally - be those challenges from adult criminal courts or the juvenile court system, the results are essentially the same. The juvenile years are a vital period of emotional development before the transition into adulthood (Erikson, 1968), and subjecting an adolescent to the severe stress, pressure, and punishment for a crime can create lifelong complications (Tepfer, Nirider, Tricarico, 2010, p. 891). The effects of incarceration are compounded given the youth's innocence, even if he or she is later exonerated. Juveniles exonerated of crimes may continue to face the shame or stigma of the conviction and the false accusation because the emotional scars and turmoil are not dissolved by their cleared name. In addition, contributing to wrongful convictions is the inherent mental state of adolescents and children at their point of development.

Juvenile exonerees are those who have been wrongfully convicted of a crime before reaching the age of majority, but may not be exonerated or released from incarceration until well into adulthood. A study by Northwestern University's School of Law Center on Wrongful Convictions of Youth found that, since 2010, at least 103 known cases of wrongfully accused or convicted youth exist; in these cases, the accused were under the age of eighteen when they were first brought into the criminal justice system (Tepfer et al., 2010, p. 891). With fifteen known cases, Illinois is the state leader in wrongfully convicted youth (Tepfer et al., 2010, p. 891). The

study included data from twenty-seven states and the District of Columbia, suggesting that the number of wrongfully convicted youth is actually much higher; the study also only includes known cases, where data is unavailable to determine other unknown cases of wrongful convictions (Tepfer et al., 2010, p. 891). Although similar factors that lead to adult wrongful convictions may be shared with that of juveniles, the age and development of adolescents further compounds the negative effects of these factors on wrongful convictions. For example, the average time an exoneree spends wrongfully in prison is 12.5 years (Mandery, Shlosberg, West, Callaghan, 2013, p. 555).

The agony of prison life and the complete loss of freedom are compounded by the feelings of what life could have been without the wrongful conviction. Often deprived for years of family and friends, of their youth, and the ability to establish themselves professionally, juvenile exonerees continue to face extreme challenges upon their release, even if they have reached the age of legal adulthood at that time. Juvenile exonerees are often released with no money, housing, transportation, health services or insurance, little or no formal education or job training, and a criminal record that is rarely cleared despite their innocence, where the punishment for a crime they didn't commit lingers long after innocence has been proven (The Innocence Project, 2013). The Innocence Project at the Benjamin N. Cardozo School of Law at Yeshiva University agrees that states have a responsibility to restore the lives of the wrongfully convicted to the best of their abilities (The Innocence Project, 2013). Currently, most states provide no formal support for exonerees - those states that do offer limited compensation may take months or longer to access, if it is available at all (The Innocence Project, 2013).

In recognizing that juveniles cannot be sentenced to death or life without parole, lawmakers have shown that juveniles are in a special legal category. In *Miller v. Alabama*, the Supreme Court found that the Eighth Amendment forbids a sentencing scheme that

mandates life in prison without possibility of parole for juvenile homicide offenders (*Miller v. Alabama*, 2012, pp. 2457-58; U.S. Const. amend. VIII),¹ which also bars capital punishment for children. *Miller* is also based in part on *Roper v. Simmons*, where the Supreme Court held that execution of individuals who were under eighteen years of age at the time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments, which prohibit cruel and unusual punishment, as well as no deprivation of life or liberty without due process (*Roper v. Simmons*, 2005; U.S. Const. amend. VIII; U.S. Const. XVI).²

The Court reasoned that children are constitutionally different from adults for purposes of sentencing and because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments (U.S. Const. amend VIII; *Miller v. Alabama*, 2012). The distinctive attributes of youth, the Court said, diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes (*Miller v. Alabama*, 2012, pp. 2457-58). Without aid, a juvenile's inherent diminished capacity makes him or her less capable of thriving post-incarceration.

In order to propose reform for juvenile exonerees, the emotional development of adolescents is explored here as a contributing factor in wrongful convictions. Then, juvenile exonerees' need for services is discussed, and the case of the exoneree Marvin Anderson is introduced as just one case example of these issues. Following the case example, the current court support is addressed, and the Illinois foster care system for youth aging out is laid out as a potential model for reform. Finally, the legislative reform for foster care transition to adulthood is explained, and how this system can be used as a sample structure to provide a system of support for juvenile exonerees.

Emotional Development of Adolescents is a Factor in Wrongful Convictions

¹ The Eighth Amendment of the U.S. Constitution prohibits cruel and unusual punishments.

² The Fourteenth Amendment of the U.S. Constitution states "no state shall deprive any person of life, liberty, or property, without due process of law."

The United States Supreme Court has formally recognized the difference of juveniles and adults within the criminal justice system where "juveniles are categorically less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults" (Tepfer et al., 2010, p. 893; *In re Gault*, 1967, p. 52).³ While the case of *In re Gault* may be the first explicit example of the U.S. Supreme Court questioning the reliability of statements made by juveniles during custodial interrogation, the Court previously had questioned the voluntariness of juvenile statements made during intensive interrogation – including those under unreasonably long hours, harsh circumstances, or overly coercive for the age of the interrogated (*In re Gault*, 1967, p. 52; *Haley v. Ohio*, 1948, p. 599; *Gallegos v. Colorado*, 1962, p. 54).⁴ Additionally, *Roper v. Simmons* and *Graham v. Florida* establish that children are constitutionally different from adults for purposes of sentencing (*Roper v. Simmons*, 2005; *Graham v. Florida*, 2010). As juveniles have diminished culpability and greater prospects for reform, the court explained, "they are less deserving of the most severe punishments" (*Graham v. Florida*, 2010, p. 68). These cases relied on four significant differences between juveniles and adults: 1) children have a "lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking (*Roper v. Simmons*, 2005, p. 569); 2) children "are more vulnerable ... to negative influences and outside pressures," including from their family and peers; 3) they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings (*Roper v. Simmons*, 2005, p.

³ The *Gault* Court states the "juvenile has a right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination" (*In re Gault*, 1967, p. 52).

⁴ In *Haley v. Ohio*, "A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest" (*Haley v. Ohio*, 1948, p. 599). The *Gallegos* Court stated "a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police [for interrogation]" (*Gallegos v. Colorado*, 1962, p. 54).

569); and 4) a child's character is not as "well formed" as an adult's" (*Roper v. Simmons*, 2005, p. 570; *Miller v. Alabama*, 2012, p. 2464).

Contributing to wrongful convictions is the inherent mental state of adolescents and children at their point of development. Youth have been shown to be especially vulnerable as a population to wrongful conviction – in particular, to false confession (Tepfer & Nirider, 2012, p. 555). As the U.S. Supreme Court has recognized on several occasions, juveniles are categorically less mature, less able to weigh risks and long-term consequences of their actions, more vulnerable to external pressures, and more compliant with authority figures than are adults (Tepfer & Nirider, 2012, p. 555). Studies of wrongful convictions demonstrate that juvenile defendants may be at special risk of being wrongfully convicted in criminal court. Juveniles are prominently featured in these studies, especially when it comes to false confessions – juveniles are, in general, more prone to suggestion or coercion as compared to adults, and are even more likely than adults to falsely confess (Cassell, 1999, p. 523; Warden, 2012, pp. 28-9; Cotter, 2010, p. 55; Boyd, 2004). *People v. Salaam*, the "Central Park Jogger" case in which five teenagers falsely confessed to rape and attempted murder, is just one of many examples of juveniles who confessed, were convicted largely based on their false confessions, and were later exonerated, in this case by DNA evidence (Drizin & Luloff, 2007). DNA evidence plays a key role in many overturned convictions, and will be discussed further.

The lack of police training on child development may also play a large role during interrogations. The higher incidence of false confessions among juveniles exists in part because standard police tactics are frequently deployed in the same manner regardless of a suspect's age (Tepfer et al., 2010, p. 891), and often don't take into consideration the suspect's cognitive developmental stage. "Although police acknowledge some developmental differences between youth and adults and how these developmental limitations may affect the reliability of reports obtained from young suspects in interrogation, there are indications that police fail to apply this fundamental knowledge to their reported practices in the interrogation context. In general, police appear to believe that youths can be dealt with in the same manner as adults" (Lassiter & Meissner, 2011, p. 250). Although there is general knowledge of

distinctions in mental and emotional development between children and adults, this distinction is blurred with concern to adolescents. Adolescents may look and seem to act like adults, but developmentally are not capable of the same judgment and decision making, which may lead to an increase in false confessions if not properly interrogated taking into account these considerations. Adolescents are generally more easily coerced into confessing to a crime they didn't commit, or may do so to hasten the ordeal of the legal process (Tepfer et al., 2010, p. 891). Adolescents are already burdened with a natural handicap in weighing risks as compared to adults, and have a higher predisposition to comply with authority or external pressure than adults (Tepfer et al., 2010, p. 891).

A higher likelihood of a false confession contributes to juvenile wrongful convictions, where emotional development *must* be taken into consideration during questioning in order to prevent the likelihood of false confessions. In a study of 103 youth exoneree cases, 31.1% had falsely confessed, compared to the 214 known DNA adult exonerees, where only 17.8% had falsely confessed (Tepfer et al., 2010, p. 904). Such data strongly suggests that youth are far more likely to confess than adults, where the younger youth are even more likely to falsely confess than older youth (Tepfer et al., 2010, p. 904). Thus, youth are at a far greater risk of a false confession and of accidentally contributing to their wrongful conviction. The problem of false confessions by juveniles is particularly troubling because once a defendant confesses, his or her conviction is all but guaranteed. Despite substantial evidence to the contrary, prosecutors, judges, jurors, and even some defense attorneys continue to adhere to the misapprehension that individuals do not confess to crimes they did not commit, resulting in wrongful prosecutions and convictions (Tepfer & Nirider, 2012, p. 556).

A false confession can be so damaging that further investigation may be halted prematurely and the matter will go straight to trial, even in cases where a false confession is not corroborated by the physical evidence (Tepfer et al., 2010, p. 907). Similar parallels may be drawn with regard to victim or witness statements made by youth where testimony extracted by police may be heavily prone to suggestion without the proper interviewing techniques taking into consideration the inherent emotional limitations of youth (Tepfer et al.,

2010, p. 907). The characteristics of adolescence that subject teenagers to a greater risk of wrongful conviction (e.g., their lack of experience in recognizing exculpatory facts and their susceptibility to exaggerating or mischaracterizing their role) are also similar to characteristics of the developmentally disabled. The U.S. Supreme Court has found that these characteristics impede the ability of the developmentally disabled to “make a persuasive showing of mitigation in the face of prosecutorial evidence of one or more aggravating factors” (*Atkins v. Virginia*, 2002, p. 320). These characteristics are common among sixteen- and seventeen-year-olds, not just among youth aged fifteen and below (*Roper v. Simmons*, 2005). In this way, courts have found that juveniles can be considered in the same category as the mentally handicapped in their ability to assist largely in their defense, where the legal disability of age makes wrongful convictions both more likely and more damaging. This can only be reflected then in a juvenile’s lack of ability to cope with a conviction. The damage of these convictions is then only further compounded by having been wrongful.

Juvenile Exonerees’ Need for Services

Regardless of the factors that contribute to juvenile wrongful convictions, the emotional and psychological toll on the youth wrongfully convicted has lifelong consequences even greater than those of wrongfully convicted adults. When released from prison, former youth have stunted emotional development where incarceration has inhibited a critical component of their adolescent development (Steinberg, 2006, p. 710). Although adolescent incarceration is in theory meant for rehabilitation and not punishment, incarcerated youth everyday minor acts of subversion, assertions of youthful identity, and masculinity are used to contest and recast the meanings, directions, and restrictions imposed by the institution (Cesaroni, 2010). As a result, these youth resist the experience of power, discipline, and formal social control through their incarceration, and carry this far beyond their release (Cesaroni, 2010). According to Erik Erikson’s theory of psychosocial development in adolescence, emerging at the stage of early and through late adolescence, one develops a sense of self and forms a personal lifelong identity (Palombo, Bendicson, & Koch, 2009). Any adolescent put on trial or convicted for a crime would face a shock to this development with

lifelong repercussions; however, wrongfully convicted youth face an even greater challenge and complications in developing their sense of self. At this stage, adolescents are confused and unsure of their role in society (Erikson, 1968). Several environmental conditions that are particularly important include the presence (or absence) of an authoritative adult parental figure; the association with pro-social or anti-social peers; and participation in educational, extracurricular, or employment activities that facilitate the development of autonomous decision-making and critical-thinking skills (Scott & Steinberg, 2010, pp. 64-5). The context of a rigidly structured and restrictive setting, such as a prison or detention center prevent youth from proper cognitive development.

Mid- and late adolescence are periods in which individuals normally make substantial progress in acquiring and coordinating skills that are essential to self-sufficient adulthood. First, individuals begin to acquire basic educational and vocational skills to enable them to function in the workplace as productive members of society (Scott & Steinberg, 2010, pp. 64-5). They also acquire the social skills necessary to establish stable intimate relationships and to cooperate in groups (Scott & Steinberg, 2010, pp. 64-5). They must begin to learn to behave responsibly without external supervision and to set meaningful personal goals for themselves (Scott & Steinberg, 2010, pp. 64-5). For most individuals, the process of completing these developmental tasks extends into early adulthood (mid to late twenties), but making substantial progress in adolescence is essential to personal development and understanding one’s role in society (Erikson, 1968). When a juvenile is incarcerated, this period of development is disrupted.

For incarcerated youth, the correctional setting becomes the environment for social development and may affect whether he makes the successful transition to conventional adult roles (Erikson, 1968). Upon reentry, youth who have been wrongfully incarcerated have the compounded issues of knowing that they have committed no wrong, but also have been subjected to the horrifying and development-impairing experience of prison. The correctional context may also impede their development into adults who can function adequately in society—in the workplace, in marriage or other intimate unions, and as citizens (Scott & Steinberg, 2010, p. 65). Following a wrongful conviction, an adolescent will most likely distrust society and

authoritative systems, which even after exoneration will remain embedded in their emotional development and sense of life direction (Erikson, 1968). With this stage of development so disrupted by a wrongful conviction, an adolescent would likely remain insecure and confused about themselves in the future (Erikson, 1968), even after their release. Where an adult exoneree will most likely have been able to form a strong sense of self well before conviction, a wrongfully convicted juvenile, even if eventually exonerated, will be stunted in this stage of development. Given these additional hardships that juvenile exonerees face, this population is especially vulnerable to difficulty in re-entering society upon their release from wrongful imprisonment.

Although youth over eighteen may be legal adults, the Illinois foster care system offers services and the protection of support until age twenty-one; juvenile exonerees in the same way may be legally aged adults, but have never lived or functioned in society as adults. Services and support are essential to providing an opportunity for juvenile exonerees to become successful in society, an opportunity that was otherwise destroyed with their wrongful conviction. Society cannot expect juvenile exonerees to survive and thrive without a system of support and services. By using services similar to the ones that the child welfare systems have implemented to extend services to youth aging out of the system, more positive outcomes can be achieved for wrongfully convicted youth.

Wrongful Conviction: The Case of Eighteen-Year-Old Marvin Anderson

Marvin Anderson, barely eighteen when he was convicted of two counts of rape, served over fifteen years in prison before he was exonerated in 2002 (The Innocence Project, 2013). Although a legal adult, Marvin at the time of his arrest and sentence was still in the late adolescent period of development. Marvin was not released from prison until he was in his late thirties and spent another four years on parole before he received an exoneration and pardon from the Governor (The Innocence Project, 2013). Only eighteen at the time of his wrongful conviction, Marvin was a legal adult but still an adolescent –and as a result faced an extreme physical and emotional toll at the time of his conviction, and ultimately following his exoneration. Marvin was first released on parole

before he was exonerated, but wasn't really free. For the first 90 days upon his release, he wore an ankle monitor and after that, he had to keep curfew and stay in weekly contact with his parole officer. For those months he remained a registered sex offender, he was not allowed unsupervised contact with children and he couldn't work as a firefighter, his dream before his wrongful incarceration (Andrews, 2011).

Even as an older adolescent, the pains of a wrongful juvenile conviction still remain. Marvin served his sentence in an adult prison. Juveniles are automatically transferred to adult prisons from juvenile detention at the age of eighteen, but may be transferred even earlier depending on the jurisdiction. Without anyone to protect him, Marvin stated, “you automatically become a man” (Anderson, 2012, p. 605). Any sense of childhood or adolescence was not paused, but rather wiped completely away. Although age and development should be important factors throughout the process, once in prison, Marvin says that no one cares about age, and many [wrongfully convicted] lack family support (Anderson, 2012, p. 605). Upon release, juvenile exonerees, such as Marvin, are left on their own, where even those who are paroled are entitled to some system of support and services as family support is not always possible or available; those exonerated, although rightfully considered as if they had never been incarcerated, can in no way benefit from programs available only to parolees, such as half-way housing and job training.

Court Support After a Wrongful Conviction

There are several factors that contribute to wrongful convictions of youth. In part, judges in cases may have insufficient evidence proving any crime by the youth, but feel a strong need for the court to intervene in the child's life and behavior and may (un)intentionally allow a wrongful conviction (Streib, 2010, p. 164). Some commentators have argued that a jury trial is required for all delinquent adjudications or criminal prosecutions of juveniles because judges convict juveniles upon proof that is less than beyond a reasonable doubt (Streib, 2010, p. 164; *In re Luis T.*, 2012).

Once a wrongfully convicted youth is exonerated, the court's intervention must shift to supporting the youth in his or her re-entry and addressing his needs. In Illinois, compensation

for exonerees was increased in 2008 to a maximum of \$199,150, and job search and placement services were added (Innocence Project, 2011, p. 28; 705 ILCS 505/8; 20 ILCS 1015/2; 20 ILCS 1710/125). There is no distinction between juvenile and adult exonerees, nor any distinction between an exoneree who served 15 years and one who served 100 (Innocence Project, 2011, p. 28; 705 ILCS 505/8; 20 ILCS 1015/2; 20 ILCS 1710/125).⁵ Since 2008, the law also directs local public employment offices to provide a range of assistance to exonerees, but requires exonerees to obtain a pardon by the Governor or a certificate of innocence by the Circuit Court (705 ILCS 505/8; 20 ILCS 1015/2; 20 ILCS 1710/125). A certificate of innocence requires a separate legal process that must be initiated by the exoneree, who also bears the burden of proof (705 ILCS 505/8; 20 ILCS 1015/2; 20 ILCS 1710/125). Last year, mental health re-entry services were made available to exonerees (705 ILCS 505/8; 20 ILCS 1015/2; 20 ILCS 1710/125), generating some improvement to the services offered. Although Illinois is one of the few states to offer such compensation, qualifying and obtaining it is difficult, time consuming, costly, and not guaranteed.

Some states impose time constraints on exonerees who seek compensation. Often, these statutes of limitation are extremely short. California, for example, only allows an exoneree two years to file a claim, and until recently, that period was merely six months (Mandery et al., 2013, p. 555). Even where there is no burdensome statute of limitations, the process of securing recovery is often expensive and protracted since most statutes place the burden of proof on the litigant, who must prove his innocence about a crime that often took place many years ago; a timeframe of a matter of months provides insufficient time to gather resources, information, and an attorney when the exoneree must also find stable housing, income, and emotionally adjust (Mandery et al., 2013, p. 555). These obstacles are cumulatively substantial, and only 41% of wrongfully convicted individuals ever receive any compensation (Mander et al., 2013, p. 559-60).

⁵ An exonerees in Illinois may receive up to \$85, 350 for serving up to five years; up to \$170,000 for serving between five and fourteen years, but no more than \$199, 150 for those serving over fourteen years. The law also reimburses attorney's fees up to 25 percent of the compensation award.

The burden of proof on the litigant is an exorbitant task on exonerees, who may be less educated and have little access to limited services, while simultaneously juggling immediate issues for basic needs upon their release (Innocence Project, 2013). Even the exoneree who satisfies the eligibility requirement perseveres in his legal battle is not guaranteed to recover very much. Regardless of a possible settlement, exonerees should be entitled to a system of support and services, without a lawsuit. A legal battle, if an exoneree can even begin one, takes money and possibly years to complete—time and resources that an exoneree cannot afford to spend on a weak chance of recovery.

The Innocence Project cites such issues with the current state and federal legislation, including several key areas for reform. The Project is targeting all states refusing to enact uniform, statutory access to wrongful conviction compensation. Currently, twenty-nine states and the District of Columbia offer some form of financial compensation, but its extent is limited and varies greatly by state (Innocence Project, 2013). Issues also include prohibiting compensation to those deemed to have “contributed” to their wrongful convictions, such as through false confessions. The Project is also targeting the states denying the additional remedy deserved by those who can prove their wrongful convictions resulted from patent and intentional civil rights violations, as opposed to simple error, and preventing the compensation of individuals with unrelated, felony convictions (Innocence Project, 2013). Some states opt to compensate the wrongfully convicted only via “private compensation bills” (Innocence Project, 2013). This approach politicizes compensation based on the individuals and policymakers involved, which requires exonerees to mount costly and demanding political campaigns (Innocence Project, 2013). Private bills thus threaten to deny appropriate, or any, compensation to those who truly deserve it by coercing exonerees into making further expenditures to receive the compensation to which they are already entitled.

Illinois Foster Care Services for Youth Aging Out

Exonerated youth are generally released with no money, housing, transportation, health services or insurance, little or no formal

education or job training, or support (Innocence Project, 2013). Youth aging out of foster care face similar issues, but are supported in part by the extended foster care system. Foster care support and services vary by state, where Illinois, in recognizing the vulnerable state of youth in late adolescence, provides services to wards of the state through age twenty-one (705 ILCS 405/2-32). Illinois has recognized that youth in foster care, who are past legal adulthood at age eighteen, benefit by being provided services until age twenty-one, and society as a whole benefits as well. For example, with respect to education, The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351) allows states to claim federal reimbursement for the costs of caring for and supervising Title IV-E eligible foster youth until their twenty-first birthday (Social Security Administration [SSA], 2014).⁶ An analysis by the University of Chicago focused on the increase in postsecondary educational attainment of foster youth who remained in care until they were twenty-one years old and compared the resulting increase in lifetime earnings associated with postsecondary education (Peters, Dworsky, Courtney, & Pollack, 2009). Researchers estimate that lifetime earnings would increase an average of two dollars for every dollar spent on keeping foster youth in care beyond age eighteen (Peters et al., 2009), which would benefit youth and society beyond just tax revenue.

Over the long term, youth who earn at least a bachelor's degree earn significantly more than those with less education, including on average 61 percent more than those with only a high school diploma or GED (Peters et al., 2009). Young people who age out of foster care without utilizing these extended services lag behind their peers in obtaining education just as formerly incarcerated youth are arguably even less likely to continue their education given the lack of preparedness and financing upon their release (Tepfer et al., 2010, p. 891). In the same way, juvenile exonerees are less likely to complete or continue their education (Tepfer et al., 2010, p. 891). A primary issue for exonerated juveniles is their lack of formal education; having been incarcerated as adolescents, most juvenile exonerees were unable to complete their high school education, let alone college level education or formal job training (Tepfer et al.,

2010, p. 891). The access to high school or GED classes while incarcerated is also limited and does not provide the equivalent of a formal education that juvenile exonerees were unfairly denied because of their wrongful conviction. Currently, upon release, juvenile exonerees in Illinois are not given formal support or educational access (Tepfer et al., 2010, p. 891). Without support upon their release, those released from prison will statistically make less income, and are more likely to rely on welfare, thus requiring overall more resources and generating less taxable income (Peters et al., 2009).

The additional cost of providing services during this period of transition from adolescence at eighteen to adulthood at twenty-one for foster care youth is offset to a degree by avoiding expenditures on public assistance, such as Social Security Income, food stamps, Temporary Assistance to Needy Families (TANF), and other welfare payments, not accounting for other administrative and associated costs (Peters et al., 2009). Given the position that juvenile exonerees are in when released, even as adults, the vast majority, if not all, would qualify for such welfare services from the government. The necessity for such welfare, however, could be prevented by providing a structured service program in the short term following their release which would provide long term positive economic and social effects for both the individual and for society. Additional benefits would also be derived that are not easy to monetize directly, such as improved personal and familial health choices and better education outcomes of subsequent generations (Peters et al., 2009).

Legislative Reform for Foster Care Transition to Adulthood

In 2009, the Illinois General Assembly created the Foster Youth Successful Transition to Adulthood Act (H.B. 4054, 2009), establishing a program of transitional discharge from foster care for teenage foster children. The Act enables former foster youths under the age of twenty-one who encounter significant hardship upon emancipation to re-engage with the Department of Children and Family Services and the Child Protection Court (H.B. 4054, 2009). The re-engagement allows youth to secure essential supports and services available to foster youth seeking to learn to live independently as adults

⁶ The bulk of federal funding for child welfare services stems from Title IV-E of the Social Security Act (Title IV-E or simply IV-E).

(H.B. 4054, 2009). In addition, the Act provides that the Department of Children and Family Services shall provide or authorize child welfare services, aimed at assisting minors to achieve sustainable self-sufficiency as independent adults to any minor eligible for the reinstatement of wardship, whether or not such reinstatement is sought or allowed, provided that the minor consents to such services and has not yet attained the age of twenty-one (H.B. 4054, 2009).

The reasoning behind the Act was that:

(1) The transition to adulthood is complex, gradual, and extended. Long after legal emancipation, many young adults rely heavily on family and other support networks for extended periods of time for financial, emotional and other forms of support, to continue with school, choose a career or find their way in the world of work, secure health care, and maintain a stable residence;

(2) The young adults who "age out" of the child welfare system are expected to be self-sufficient long before their peers, with far fewer resources, and often with many challenges unique to the experience of growing up in foster care;

(3) Many young adults who "age out" of foster care are ill-equipped to live independently and are especially vulnerable to unemployment, homelessness, mental and physical health-related problems, incarceration, teen pregnancy and parenting, and other obstacles to achieving sustainable self-sufficiency; and

(4) It is in the interests of foster children who leave the foster care system prematurely, and who subsequently find themselves unable to maintain their independence without additional support, to have a mechanism for reengaging with the Department of Children and Family Services and the Juvenile Court, and to secure the support and services available to foster youth seeking to learn to live independently as adults (H.B. 4054, 2009).

Although legal adults, exonerated juveniles and youth aging out of foster care face similar challenges in entering society as adults. Both need a support network for an extended period of time for financial and emotional

stability, as well as support in preparation for independence. Just as foster care youth need these services to be self-sufficient, exonerated youth incarcerated as juveniles also require state assistance to their right to thrive in society as adults, even if legally they are adults at the time of release.

In this way, Illinois has recognized that the eighteenth birthday does not create an independent foster care adult; an adult who has spent his entirety of adulthood wrongfully incarcerated also cannot also emerge as a self-sufficient, contributing adult to society upon release without support and services. In a parallel context, the foster care and child welfare systems have means of supporting youth before their launch into adulthood from the arms of the State (Atkinson, 2008, p. 185). Using the Supreme Court's reasoning in *Miller* and *Roper* to look at the needs of juvenile exonerees, just like young adults aging out of foster care, they are expected to act well beyond their developmental age. In acknowledgement of the child welfare system's failure to adequately prepare youth aging out of foster care for successful adulthood, legislation has been aimed at supporting the development of programs and services for this population (225 ILCS 10/2.01). In the same way, juveniles wrongfully imprisoned, even when they reach the age of majority, should still be given access to services to assist them in rebuilding their lives. A model such as that for older youth aging out of foster care can be used to both justify and implement services for exonerees.

Conclusion

Despite being exonerated, there seems to be an inherent human belief that wrongful convictions cannot really happen, or that innocent people do not go to prison. The idea of a wrongful conviction seemed both unrealistic and unimaginable, especially to a public transfixed by the "soft" criminal justice system that seemed rigged to allow criminals to go free on technicalities (Drizin, 2007). Despite current attitudes, proposed reform for juvenile exonerees is still needed.

Upon release, juvenile exonerees may have little to no formal or higher education, extensive job skills or work experience, especially given their young ages at the time of their convictions. An exoneree emergency fund is needed to address these issues and provide a network of support for transitioning back to society. This would include social services,

mental health and therapeutic support, employment support (job training, placement, and/or education), as well as housing and financial support. Without these services, wrongfully convicted juveniles face a repeat victimization, and are denied a genuine chance at successful reintegration. Other areas for reform should include police training in youth interrogations, mandatory electronic recording of youth interrogations and confessions, among other legal and social concerns. Youth have access to fewer post-conviction remedies than adults and access to DNA testing makes it harder to prove their innocence (Tepfer et al., 2010, p. 922). These additional reforms should be explored.

Other factors contributing to wrongful convictions of youth not further explored here could include ineffective assistance of counsel, prosecutorial misconduct, eyewitness testimony, and false guilty pleas, among others. Generally, where research does exist, it concerns mainly only more serious offenses, or cases involving juveniles sentenced in adult criminal courts.

With continuing research and study, greater reform can be proposed to prevent or minimize wrongful juvenile convictions. Reducing wrongful convictions for juveniles is, however, just one need for reform from the legal end; in social work, reform focuses on current or future exonerees, where a structured system of support and services is essential to establishing success and can be modeled after the extended foster care system.

Any exoneree should not be faced with this logistic difficulty in negotiating their return to society, especially exonerees who were juveniles at the time of their wrongful conviction or exoneration. Paroled juveniles are entitled to services, but those exonerated have no formal system of support outside of possible family or friends. Reform is needed to recognize that exonerees face similar, if not the same types of circumstances, as parolees. Little to no formal research has been conducted in this field, and reasons for and results of juvenile wrongful convictions are left under researched.

Victoria Carmona Fehr received her Juris Doctor from Loyola University Chicago School of Law and her Master of Social Work from Loyola University Chicago School of Social Work. She is also a graduate of the University of Chicago, having received her Bachelor's in International and Latin American Studies. Victoria is especially passionate in the areas of domestic violence, juvenile justice, children's rights, and the intersection of law and social work practice. During her graduate studies she interned with the Chicago Alliance Against Sexual Exploitation (CAASE), Between Friends, the U.S. Department of Justice, the Chicago Legal Clinic, the Civitas ChildLaw Clinic, and the Bluhm Legal Clinic. She currently works in immigration law in private practice in Chicago.

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Lack of Education in Myanmar and Its Impact on Refugee Women

Sonia Ayala, MSW, MA, Catherine Tambeaux, and Lorena Zamarelli

Abstract

Quality of education is globally critical for economic and societal success. Refugees' countries of origin often lack a structured educational system that promotes the advancement of women. Refugees from Burma, now called Myanmar, enter the United States at a disadvantage because of the lack of education they received prior to entry; this is especially true for women, due to the culturally prescribed gender roles that exist in Myanmar. By examining the history of education in Myanmar, we can better understand and work with female refugees when they enter the United States. Relevant clinical theories will be described and discussed.

Keywords: Myanmar, Burmese, Refugees, Education, Social Work Practice, Clinical Theory

Statistics and History

Since the 19th century, the country of Myanmar has suffered deeply from a series of hardships and political persecution. Upon the country's development, individual groups were forced into a joint union by the British Empire. Although there was tension among the various regions of Myanmar, the British still allowed individual ethnic groups, including minorities, to exercise autonomy (Aung-Thwin, Htit Aung, & Steinberg, 2013). Under British rule from 1824-1948, Myanmar became one of the most powerful monarchies in South East Asia. Firmly rooted in tradition, Buddhist religion, and strong education, the country of Myanmar continued to thrive, despite its people's limited political power. Myanmar had the opportunity to develop high-quality educational standards that provided people with academic tools, such as skills in reading, writing, mathematics and science (Foreign Affairs Committee, 2000). Formal western-style schooling replaced traditional monastic education systems (Foreign Affairs Committee, 2000). Rangoon University was founded in 1920, but, that same year, there was a strike protesting the British control over their education system (Foreign Affairs Committee,

2000). Despite these ongoing tensions, when Myanmar first became independent from the British in 1948, the country had one of the highest literacy rates in Asia. The country was expected to become one of the fastest developing "Asian Tigers" in the region (Oxford Burma Alliance, 2014).

Soon after Myanmar gained its independence, the country entered into a civil discord where individual ethnic groups rose up against the Burmans, the primary ethnic group in Myanmar (Finding Dulcelina, 2011). By 1962, the Burmese military had taken over all of the country's power, leading to ethnic oppression, forced labor, and internal displacement (Oxford Burma Alliance, 2014).

After the military take-over, the quality of education experienced a drastic decline and never recovered. In 2010, the Human Development Index ranked Myanmar 132 out of 169 countries, indicating the country to be one of the least developed among underdeveloped countries (United Nations Country Team in Myanmar, 2011). There is a significant gap between urban and rural development; individuals and families living in poor, rural areas are exposed to extremely vulnerable conditions with limited access to basic resources and social services (United Nations Country Team in Myanmar, 2011). These limited resources include access to adequate education. According to data compiled by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 2011, Myanmar's public spending on education, calculated from a total percentage of the GDP, was .78 percent. Its highest value over the past 39 years has only been 3.27 percent in 1973 (The Global Economy, 2014).

Rather than spending money on education or community development, 40 – 60 percent of the national budget is being used to pay for 450,000 military personnel (Macan-Markar, 2010). In 2010, the average years of schooling per person increased to 4.6 from 3.1 in 1995; however, there was no data indicating the percentage of youth who were not in school or at work (World Bank, 2010). Even though education is only required for five years, the majority of students stop going to classes even

before the five years is completed; only 77.5% continue through grade five. Less than 50% of students go on to attend secondary school (United Nations Country Team in Myanmar, 2011).

Very few students from Myanmar have the opportunity to access higher education. Those few students who do attend the university are forced to pay very high fees and are not allowed to choose their area of study. Despite a student's interest in a course subject, the government assigns students their classes based on the scores they receive on their matriculation exams (Oxford Burma Alliance, 2014). Furthermore, much of the curriculum used for higher education does not align with the current needs of Myanmar's workforce, such as environmental studies, conflict prevention, political science, and journalism (Institute of International Education, 2013).

At the United Nations summit in 2000, the global body launched the Millennium Development Goals (United Nations Country Team in Myanmar, 2011), where national experts agreed to achieve universal primary education as well as gender equality and women's empowerment by 2015. However, the 2011 thematic analysis for MDG's program in Myanmar indicated that not enough improvement has been made in the area of education. Although between 2000 and 2010 there were several significant improvements made, including expansion of secondary education, development of early childhood education, and increased initial enrollment in primary school, there are still many deeply rooted challenges in Myanmar's education (United Nations Country Team in Myanmar, 2011). There is a considerable amount of variation in educational success among Myanmar's states and divisions, particularly in the poor, rural areas of Myanmar (United Nations Country Team in Myanmar, 2011).

One key barrier to strengthening education in Myanmar is the financial burden that educating children place on families (Macan-Markar, 2010). Although there are laws in Myanmar stating that primary education is expected to be free of charges, in order to offset the costs of building maintenance, as well as supplies, there is typically a fee equivalent to approximately \$100 U.S. (Macan-Markar, 2010). Since the majority of people in Myanmar live outside of the main city area, receiving education means paying this fee as well as paying for transportation to the school (Macan-Markar,

2010). If families are financially restricted, they will often send their sons to school and keep their daughters at home to work (Macan-Markar, 2010). If students want to move forward to secondary education, the fees continue to rise. For secondary school, parents are expected to pay 200,000 kyat, or the equivalent to \$200 U.S., at the beginning of the school year (Macan-Markar, 2010). The burden of privately financing school education weighs heavily on poor households, who must consider the opportunity cost of attending school versus agricultural work or caring for younger children. As a result, there are many children who fall behind in school, some areas having 13% of school-aged children behind by at least three years. Furthermore, nearly 30% of school-aged children do not attend school at all because of the cost burden (United Nations Country Team in Myanmar, 2011).

With this information, we can infer that low-income Burmese females have extremely limited access to education. Although the system is unfair to both men and women, there is, in fact, an unfair gender bias towards men achieving an education in Myanmar. Although MDG has helped to develop more gender equality in education, patriarchal cultural norms and values remain prevalent in Myanmar society (United Nations Country Team in Myanmar, 2011). Although females outnumber males in enrollment for secondary education, their participation in the labor force remains only at 50%, indicating there is a mismatch in the skills demand and the supply of the economy (United Nations Country Team in Myanmar, 2011). The MDG Thematic Analysis (2011) stated, "Inequalities in educational access of boys and girls is largely a function of whether they come from a rural or urban context, their social class, or their linguistic and ethnic group" (p. 23). Although this may be true, the following generalized issues heavily impact the outcomes for women in the labor force.

For example, Myanmar has no specific legislation against gender-based violence, heightening the risk for females to be conscripted in sex trafficking, rape, and sexual abuse (United Nations Country Team in Myanmar, 2011). The fear of violent abuse from state and security forces often causes women and children to flee either internally or to safer bordering countries. There were an estimated 649,000 persons displaced by violence and 22,000 who were displaced by flooding as of September 2013 (United States Department of State, 2013). It is estimated that approximately

80% of all internally displaced persons (IDP) are women and children (UNICEF, 2012). IDPs have extremely limited access to education services, along with other basic resources like clean water, sanitation, and health services (Bureau of Democracy, 2013). The Muslim community living in the northern Rakhine state, known as the Rohingyas, was forced to internally displace when the Burmese government removed their citizenship in 1982 (Bureau of Democracy, 2013). Their stateless status prohibits them from accessing the full range of basic educational rights and higher education opportunities (Bureau of Democracy, 2013). Females in the Rohingya community are particularly vulnerable: at a higher risk of being trafficked, the school-aged females have significantly decreased opportunities to enroll and complete schooling programs (Bureau of Democracy, 2013).

Statistically, the development of MDG goals in 2000 has had a positive influence on the education of females. In 2009-2010, it was found that gender parity has been achieved at the primary level; girls' enrollment in primary school has increased to 84 percent and the young female literacy rate is estimated at 87.8 percent (UNICEF, 2012). Although this is a positive advancement for this generation of females living in Myanmar, there is still a drastic contrast between the wealthy and the poor populations. Additionally, since education in Myanmar had made significant advancements in the past decade, the parents, particularly mothers, of the current generation of students are typically far less educated than their children. Since childcare is typically the responsibility of the woman, mothers' education levels can greatly influence their children's academic involvement. If the mother has not been educated herself, it is much less likely that she will prioritize education for her child (UNICEF, 2012).

Impact on Refugees

When refugees enter the United States, they are already facing many barriers, and a lack of education only increases the hardships they face. Education is key to success in many societies because it provides the ability to better access jobs and the labor market in the new host country (Hartog, 2007) and, through this, increases the possibility for socioeconomic success.

As examined above, women refugees experience very little educational attainment in

their home countries (United Nations Country Team in Myanmar, 2011). Burmese women are not encouraged to attend school as a consequence of their cultural and societal norms. When transitioning to United States society, they bring this educational disadvantage with them. It is important to note that the majority of refugees are women and their dependents or children; this population accounts for about 80% of the total refugee population (Green, 1994). This large group enters the U.S. at an educational disadvantage and, therefore, a societal disadvantage.

Although refugees have the legal ability to work in the United States, they often face barriers similar to those faced by undocumented immigrants, such as discrimination, lower/nonexistent English abilities, cultural differences, and educational disparities. Although refugee women are legally able to be employed in the United States, without an education, many jobs are out of reach. Similar to their situation in Myanmar, women are not educated or given necessary support in order to find employment and enter the workforce (Statistics 2014). In the United States, they often cannot qualify for jobs that require a high school diploma (Olcon, 2014). Refugees are given three months of financial support when they arrive in the United States; for women without an education or the ability to speak English, this is not sufficient time to develop the skills needed to secure employment (Olcon, 2014).

Even if a refugee enters the new country with a higher level of education from their home country, they still may not be able to find work due to their lack of language skills. Jobs that require higher educational attainment may also require a higher level of language ability (Hartog, 2007). If the refugee does have higher educational attainment, as well as language ability, there may be a lack of certification in their new country (Hartog, 2007); levels of education and certification vary around the world, and even if a woman received her education in Myanmar and went on to receive higher education, that system may not fit with the American educational system and job requirements. There is a continued pattern of being at a disadvantage due to educational disparities and differences among countries.

The consequences of not having a higher level of education affects not only the woman's experience once in the United States, but also her family's experience. Inequality is a byproduct of less education and can become a

cycle within families; low-income children get less education due to many consequences of their social situation and, therefore, have lower earnings in adulthood (Neckerman & Torche, 2007). The cycle can continue to perpetuate itself and may be very hard to break.

Educational and other cultural systems within the United States are often more formal than the systems in refugees' home countries (City School District of Albany, 2010). Due to this fact, strict attendance and compulsory education are concepts unfamiliar to Burmese refugees, especially women who have not previously participated much in their home country's educational system. If the woman has children with her in the United States who become involved with the educational system, there is often a communication barrier that prevents parental involvement in her children's education. This educational imbalance can cause a relationship shift between the parents and children, changing the power structure. Children absorb and learn language faster than adults, and are often utilized as interpreters for adults and parents (City School District of Albany, 2010). Parents who do not have adequate English skills to navigate society often become dependent on their children, which can cause disproportionate power for the children, as well as other consequences, such as stress and tension among family members.

Cultural differences would also be more difficult to understand without a higher level of educational attainment. For example, Burmese refugee women have not been educated on the different health systems found in the United States. In addition to lower overall educational attainment, there is a lack of information and education available about the healthcare system. Pregnancy, for example, is addressed very differently in refugee camps and Myanmar than in the United States. Burmese women living in rural areas traditionally use a midwife rather than a structured prenatal system (State of Rhode Island Department of Health, 2014). Ability to understand the importance of things such as attending appointments or following specific medical instructions may be hindered by cultural norms and lack of educational expectations of women.

Obtaining education can have many positive impacts for Burmese refugees, especially for women. If a refugee is illiterate and works toward achieving literacy, they create hope for their own, as well as future generations', success. Education will provide an

opening to gain confidence and skills necessary to enter the workforce and be successful (Empower Ethnic Burmese Refugees Through Education, 2014). Refugee women can often benefit in different ways from migration; the roles in the family that they had once occupied are reversed. The women are able to take on more responsibility within and outside of the household and find more opportunities this way. The chance to change their role in the household also provides them an opportunity to better themselves and their situation through education.

Refugees in the United States often go through their transition with the assistance of a resettlement agency. Depending on the agency and geographical area, different services may be provided; application of social work practices and theories may help benefit Burmese refugee women in their attainment of education and their functioning in society.

Application of Theories

How to Choose a Theory

Integrated social work practice may be highly effective when working with Burmese women and their families. Burmese culture is very diverse, so the use of integrative practice would extend beyond certain limitations a single theory might represent. Immigrant and refugee families deal with a variety of issues throughout their lifetimes, thus requiring the use of various approaches over time. Many of these families come from a country where they were threatened politically, socially and economically and thus were forced out of their country. As stated earlier, many Burmese women are already at a disadvantage when educational opportunities in their home country are scarce. As they enter the U.S., their background and lack of opportunities becomes a permanent shadow that can lead to more barriers and disadvantages. Not all theories accommodate these influences and experiences, so it is helpful to integrate multiple theories and techniques. There are several theoretical approaches that can be useful to social workers when working with Burmese women regarding educational opportunities and other overlapping issues. The theories and concepts that will be examined are solution-focused therapy, narrative therapy, empowerment theory and strength-based practice. The primary theories that will be discussed are solution-focused therapy and narrative therapy. These theories will be applied

as foundational practices, but they will also be integrated with techniques and concepts from empowerment theory and strength-based practice.

Solution-Focused Therapy

Solution-focused therapy reflects what is currently “working” for the client system. Solution-focused therapists do not necessarily focus on what is causing the problem in order to make progress with the family or the individual. It is important for the social worker to help clients see that their problems have exceptions, times when the problems do not occur, and that these exceptions are solutions they already have built into their repertoires. (Walter & Peller, 1992, p.13) Solution-focused therapy assumes that the client is the expert. The clients define their own goals and solutions to their chosen problem. (Walter & Peller, 1992, p. 28) Change is always occurring, so it is important for the social worker to make sure the client is aware of the small changes occurring every day. (Walter & Peller, 1992, p.15) Strengths and exceptions are valuable components to changing the client’s behavior. It is also important for social workers to encourage clients to talk, think and solve their issues by using positivity (Walter & Peller, p.11, 1992).

Solution-focused therapy uses interventions in the form of questions. By posing the “miracle question,” the social worker will find out what the problem is from the client’s perspective and how the solution will impact his or her life after the problem is resolved. (Walter & Peller, 1992, p. 73) The “miracle question” can be posed by the social worker to get an idea of how the client will see his or her life without any problems. (Walter & Peller, 1992, p. 77) Scaling questions are also extremely effective when exploring with the clients how stressed, angry or sad they are about a specific situation or issue. The clients are able to distinguish the problems they are currently facing by ‘rating’ it on their own terms. (Walter & Peller, 1992, p. 211) In solution-focused practice, social workers frequently use compliments, which encourage clients to think and see themselves in a more positive way. (Walter & Peller, 1992, p. 114) The social worker can praise the client when small changes are made. Constant encouragement and support leads to small behavioral changes every day (Walter & Peller, 1992, p.18-19).

When working with Burmese clients, positive reinforcement and affirmations may become helpful during the clinical process. Because of the different culture, it may be difficult, in the beginning, for Burmese clients to trust these positive reinforcements and affirmations. Solution-focused therapy allows Burmese clients to reflect on their resiliency and what has worked for them in the past. This method can help break the ice between the social worker and Burmese clients. The main idea of solution-focused therapy is the think about the positive and future. When working with Burmese women who have been rejected from educational opportunities their entire lives, this main idea can help Burmese women create and plan specific goals that can lead to achieving a connection to education. Solution-focused therapy can also integrate strength-based practice approaches to try to fully meet the needs of Burmese women in the U.S.

Strength-Based Practice

The strength-based practice can be easily connected to empowerment theory because its main focus is to help clients determine and develop resources that may be beneficial in working towards their needs. According to the authors Chang-Muy & Congress (2009), strength-based practice is something that “demonstrates validation and recognition of individual uniqueness, capacity of individuals to overcome hurtful life events, and significance of belonging to a community as a measure of individual wholeness” (p. 91). This can be extremely helpful when working with Burmese women because their experiences and feelings will be validated and their strength and resilience will help them overcome barriers placed before their needs.

Solution-focused therapy and the strengths-based practice can also be used as a method of engagement during the therapy sessions. The techniques and concepts presented above can develop a positive, engaged relationship between the client and social worker. By developing an engaging relationship, Burmese clients could build a trusting relationship with the social worker and other support systems. A connection to strengths-based practice effectively influences the resiliency Burmese women have acquired over time. This might be challenging at first because throughout history, Burmese women have always been

denied the right and opportunity to education. As stated earlier, mistrust will be a complicated barrier social workers will have to work through. When this occurs, the therapeutic relationship will become more trusting and open. By focusing on the positive and strengths, Burmese women will be strongly encouraged to pursue their basic right to education.

Narrative Therapy

Professor Priscila Freire cited Morgan (2000), stating, “Narrative therapy seeks to be a respectful, non-blaming approach to counseling and community work, which centers people as the experts in their own lives” (personal communication, July 18, 2013). Storytelling is a very effective narrative therapy technique. The concept of storytelling involves specific factors, which are events, linked in sequence, across time and according to a plot. (Kilpatrick & Holland, 2009) All of these factors form the concept of storytelling. According to Morgan (2000), as cited by Freire, “as humans, we are interpreting beings. We all have daily experiences of events that we seek to make meaningful. We give meanings to our experiences constantly as we live our lives. A narrative is like a thread that weaves the events together, forming a story” (personal communication, July 18, 2013). Narrative therapy also resonates with Burmese women who are willing to express their feelings and stories in their own words. Social workers may face language barriers when working with Burmese women. It may be difficult to establish narrative therapy if Burmese refugees do not feel comfortable sharing their story with a professional who does not speak their language. In this situation, an interpreter can be extremely helpful to Burmese women who do not speak English and wish to communicate and be understood in their own language. On the other hand, it may be challenging to enact narrative therapy because the client may find a third party disruptive. If this is the case, the social worker may be able to present positive body language, facial expressions and eye contact during the entire interaction. This can create a more comfortable and trusting environment between the social worker and the client. The road to attaining education can be best expressed through narrative therapy because the therapeutic process includes the client’s own words, feelings and thoughts surrounding the experience. In general, this form of therapy can eventually lead

women to convey their story with strength and empowerment.

Scaffolding is another technique that the social worker can use to help the client use their history as the foundation for their new story (Kilpatrick & Holland, 2009). For a family to rewrite their story and have change be available when necessary, three forms of intervention must be present. The interventions are collapsing time, raising dilemmas and enhancing changes. Collapsing time and raising dilemmas help the family look back into their past history and reflect how the problem developed and how the problem can change. Enhancing changes can encourage the client to examine their negative depictions of their story and make positive changes (Kilpatrick & Holland, 2009). Narrative therapy can be integrated with solution-focused therapy and the empowerment theory in order to provide more positive support to clients.

Empowerment Theory

Empowerment theory is a “social work approach in that it promotes social justice and advocacy, addresses the role of social power, normalizes difference, and occurs on personal, interpersonal, and political levels that encompass power relations” (Chang-Muy & Congress, 2009, p. 87). The empowerment theory involves a framework that focuses on three levels: identifying services, engagement through services and advocacy and a positive affect towards the clients’ communities (Chang-Muy & Congress, 2009, p.88). The implications for practice within the empowerment theory will need to address engagement skills, personal, interpersonal and political perspectives, and it would be necessary to question what forms of participation on the clients’ part needs to be done in order to achieve a greater empowerment. This theory can be integrated with narrative therapy so clients will be able to re-tell their story using the empowerment framework. This will help them achieve a more positive outcome towards their goals. As mentioned earlier, the strengths-based practice can be related to the empowerment theory because both theories focus on creating a connection with the client and his or her achievements. Empowerment theory can continue to encourage Burmese women refugees to seek education, which will serve as a stepping-stone to greater achievements in status, economic stability and work opportunities.

Conclusion/Implications

Burmese women refugees face many barriers. When working with this population, it is important for clinical social workers to identify theories to help overcome the barriers, especially lack of education. Clinical social workers also have to remind themselves that Burmese women refugees are the experts of their own lives and experiences, so they are able to frame their issues in a way that is understandable to them. It is important to focus on an integrative model when working with diverse populations. All of the theories examined above can be applied to work with these women in a way that would be accessible to the client at her level. A change to U.S. policies can certainly change the status and opportunities Burmese women refugees are given after migration. Availability of governmental support, aid and programs also has a strong impact on education attainment and economic stability for Burmese women and their families. A call to this type of support can positively influence realistic educational and economic opportunities for Burmese women refugees.

Overall, considering the cultural background and immediate needs of Burmese

women refugees, the integrative model chosen will best serve new arrivals. Although there is always the need to meet each client with his/her own unique experiences, these theories provide a solid foundation for the therapeutic work ahead. The theories discussed above will also have limitations when working with Burmese women. More research and information is needed to fully grasp what theories and practices will be the best fit for Burmese women. More research on U.S. policies also needs to be applied in order to fully support all aspects of Burmese women refugees' experience. Burmese culture will need to be taken in consideration when conducting theoretical practice with Burmese women. Burmese culture will impact work with a social worker because Burmese women may interpret any theoretical practice as foreign interference. At first, there will be mistrust to services and contact, so social workers need to be constantly empathic to Burmese refugee women's struggles, perspectives and beliefs. The social worker will always need to meet the client where he or she is currently, and they will embark on their unique journey together.

Sonia Ayala is a MSW graduate from Loyola University Chicago concentrating in Children and Families. She also graduated with a MA in Women and Gender Studies from Loyola University Chicago. She is currently employed as a bilingual advocate for the YWCA in the western suburbs of Chicago. She primarily serves undocumented Latina women and girls who have been sexually assaulted and abused. She has been with the YWCA since the year 2012, as a volunteer, intern, part-time staff, and was hired as a full-time staff in May of this year. Sonia hopes to continue working with immigrant women and families who are facing domestic violence, sexual violence, and many other inequalities due to their legal status.

Catherine Tambeaux is a MSW student at Loyola University Chicago specializing in Leadership and Development of Social Services, Non-Profit Management and Philanthropy, and Migration Studies. Catherine has interned in multiple agencies including a refugee resettlement agency assisting refugees and immigrants in understanding the Affordable Care Act and health care in the United States. Catherine is currently interning at Catholic Charities in Development and Foundations. Catherine expects to complete her MSW in May of 2015.

Lorena Zamarelli is a MSW student at Loyola University Chicago specializing in Children and Families and Migration Studies. Lorena worked for Catholic Charities' Refugee Resettlement program from 2012 - 2014 as a medical case manager and adjustment counselor for refugees and asylees from Burma, Iraq, Bhutan, Cuba, and the Republic of Congo, among other countries. Lorena is currently completing her second level internship with Catholic Charities' Youth & Family Therapeutic Services doing individual and family counseling with children.

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A Critical Analysis of the Collaboration of Child Welfare Professionals and the Response to Commercial Sex Trafficked Children in Illinois

Sharon L. Falen

Introduction

Since its creation in 2003, the Innocence Lost program has resulted in the identification and recovery of approximately 3,600 minors who have been sexually exploited (Federal Bureau of Investigations [FBI], 2014). Federal Bureau of Identification Director James Comey articulates the issue clearly with these words: "These are not children living in some faraway place, far from everyday life. These are our children. On our streets. Our truck stops. Our motels. These are America's children" (FBI, 2014).

Human trafficking is not only an international problem, but also a dilemma grossly prevalent in the United States. According to the National Center for Missing and Exploited Children, at least 100,000 children are sexually exploited domestically each year (U.S. Department of Education, 2013). It is important to note that this estimation does not include labor trafficking victims since human trafficking is broken down separately into labor trafficking and sex trafficking. In response to this escalating issue, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) and reauthorized the Act in 2003, 2005, 2008, and 2012 (Trafficking Victims Protection Act [TVPA], 2014).¹ The enactment of this legislation was a major step in recognizing the widespread problem of human trafficking.

The TVPA defines sex trafficking as [S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose

of subjection to involuntary servitude, peonage, debt bondage, or slavery (TVPA §103(8)).

Thus, trafficking can involve either labor or commercial sex acts, and both children and adults can be victims and survivors. This article will focus on sex trafficking of children specifically. Congress has defined sex trafficking of a minor as knowingly recruiting, harboring, transporting, providing, obtaining, or maintaining a person, or benefitting financially from such action, where a person is under eighteen years old and will be caused to engage in a commercial sex act (18 U.S.C.A. § 1591). No force, fraud, or coercion is necessary under the definition of sex trafficking of a minor (18 U.S.C.A. § 1591). Nevertheless, "pimps"² and other traffickers all too often use threats, false promises, and violence to coerce young victims into compliance and to prevent them from leaving (Bergman, 2012, pp. 1365-66).

The average age of entry into prostitution or other forms of sex trafficking is twelve to fourteen years of age, according to the United States Department of Justice (Reichert & Sylwestrzak, 2013, p. 2). This article will focus on sexual exploitation of youth due to the severity of this issue and due to the lack of identification and monitoring of sexual exploitation even once children are identified in the courts for other issues. For instance, trafficked children may come into juvenile court through child protection or delinquency proceedings and their history of trafficking may get "lost in the system" (Walts, Reichmann, & Lee, 2013, pp. 26, 29). Child sex trafficking is also a critical issue in the context of child welfare because of the pervasiveness of trafficking of foster children and runaway youth (Administration for Children, Youth, and Families [ACYF], 2013, p. 4; Klain & Kloer, 2009, p. 12). As the TVPA does not specifically

¹ Reauthorization is the process by which Congress makes changes, additions, or deletions to a piece of legislation or approves the legislation again for subsequent years.

² "Pimp" is a term often used to refer to a trafficker in the commercial sex industry. Pimps can also be family members, boyfriends, or other people who the child already knows or meets on the streets (Polaris Project, 2014a).

address the population of trafficked youth and their unique vulnerability, child welfare professionals should help ensure that this population receives much needed remedies, including legal remedies and social services (Klain & Kloer, 2009). Another common obstacle for foster children who are sexually exploited is overcoming strong emotional attachments to their traffickers, especially if they do not have stable placements and caretakers.³ For children in the child welfare system, attachment can pose a real barrier to finding a placement for the child that is both safe and suitable to the child client.

This article will also be limited to a discussion of the child welfare system in Illinois juvenile court⁴ with particular focus on Chicago, which is recognized as one of several human trafficking hubs in the United States (Illinois Department of Health and Human Services [Illinois DHHS], 2009). Though the legislature has only recently addressed trafficking within the United States, the issue is not new. In 2000, the Center for Impact Research estimated that over 16,000 girls and women are involved in prostitution in any given year in the Chicago metropolitan area (O’Leary & Howard, 2001, p. 30). It is critical for all professionals who interact with children to be aware of how child sex trafficking operates and to be equipped with the knowledge and resources to tackle the issue skillfully and effectively.

This article will first serve as an outline of some of the major relevant laws on which the courts in Illinois rely when dealing with sexually exploited youth. Note that this section is not intended to be inclusive, but instead will focus on major laws relevant to the child protection court system. Second, it will focus on capacity

building of guardians *ad litem*,⁵ social workers, and other professional advocates for children within the child welfare system. This section will open with an emphasis on the importance of effective procedures and continue with proposals for improvement. Finally, the article will conclude and outline some challenges that professionals need to overcome to better advocate and treat trafficked individuals.

Illinois’ Safe Harbor Law and Other Applicable Legislation

“Safe harbor laws” include state legislation that “prevent[s] minor victims of sex trafficking from being prosecuted for prostitution” and “protect[s] child victims of sex trafficking by providing them with specialized services” (Polaris Project, 2014b). Illinois was one of the first states to codify the TVPA into a “safe harbor law,” and Illinois was the first state to mandate that “all children under the age of 18 are immune from [criminal] prosecution for prostitution, under any circumstances” (Polaris Project, 2010). Signed into law in 2010, the Illinois Safe Children Act (ISCA) mandates that children involved in prostitution receive assistance from child welfare professionals instead of being arrested and placed in juvenile delinquency proceedings (Polaris Project, 2010; 720 ILCS 5/11-14). Additionally, Illinois’s safe harbor law amended the Abused and Neglected Child Reporting Act (ANCRA), explicitly stating that sex trafficked children are now covered under the definition of “abused” or “neglected” (325 ILCS 5/3(h)). Under the law, a minor is abused if a caretaker or any person responsible for the minor’s welfare or residing with the minor “commits or allows to be committed the offense of involuntary servitude, involuntary

³ For instance, traffickers may exploit a child’s personal or familial financial dependency or a child’s need for affection. Often, traffickers coerce a child to reveal personal information early on in order to later threaten the child (Klain & Kloer, 2009, p. 13).

⁴ The name for abuse and neglect court in Chicago is the Child Protection Division within Juvenile Court, but names of parallel courts in Illinois vary depending on jurisdiction. For ease of discussion, this article will refer to “child protection court.” This article will also use the phrase “child welfare system” to encompass the entire group of professionals, including social workers and attorneys, who work with child clients within this court system, as well as child protection services beyond court proceedings.

⁵ A guardian *ad litem* refers to any advocate for a child in court and need not be an attorney. The role of a guardian *ad litem* in juvenile court is specifically defined under the Juvenile Court Act, which governs child protection proceedings in Illinois (705 ILCS 405/4-16). Note that the term varies, however, depending on jurisdiction. The Office of the Public Guardian is the government appointed advocate for the child in the Child Protection Division of Juvenile Court in Cook County, Illinois. In other jurisdictions, the child may be represented by the Office of the Public Defender, by the State’s Attorney Office, or by a court appointed special advocate (CASA) volunteer, who need not be an attorney (705 ILCS 405/2-17, 2-17.1, 2-18; Office of the Cook County Public Guardian).

sexual servitude of a minor, or trafficking in persons...[or] allows, encourages, or requires a minor to commit any act of prostitution” (325 ILCS 5/3(h)).

Under ISCA, if a child is engaged in prostitution, law enforcement is required to take the child into protective custody and to notify the Illinois Department of Children and Family Services (DCFS), which will investigate the abuse within twenty-four hours (Polaris Project, 2010). Specifically, DCFS has recently established allegations, numbered 40/90, of Human Trafficking of a Child for its child protection investigations, and “law enforcement officers and mandated reporters of abuse and neglect will be required to report to the DCFS Child Abuse Hotline whenever they have reason to suspect that a minor has been exploited by traffickers” (Illinois DCFS, 2012, p. 144; DCFS Policy Guide 2013.05). The new allegations include either the trafficker in a caretaker role, or a situation where the caretaker allows trafficking to take place or failed in supervising the minor child (S. Sloan, Human Trafficking Coordinator/Cook County Human Trafficking Task Force member, personal communication, June 27, 2014). If DCFS finds sufficient evidence, the child enters the child protection system (325 ILCS 5/7.12; 705 ILCS 405/2-7, 2-8).

Once the child is in the court system, a judge must determine whether the minor is abused, neglected, or dependent (705 ILCS 405/2-3, 2-4). The court employs the Juvenile Court Act, which includes trafficking explicitly in its language,⁶ throughout these proceedings. Since ANCRA also now includes traffickers in its definition of caretaker, most commercial sexually exploited children (CSEC) will be directed through the child protection system (705 ILCS 405/1-2).

However, once the trafficked child is in the court system, the trafficking issue may be lost or overlooked, and other times child sex trafficking is never identified in the first place (Walts et al., 2013, pp. 19-20, 27). The Juvenile Court Act aims to protect abused and neglected

⁶ Those who are abused include any child under the age of 18 whose “parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent” commits or allows to be committed against the child involuntary servitude or sexual servitude, or trafficking in persons for forced labor (705 ILCS 405/2-3).

children, but the system was designed specifically for caretakers who are abusing their child, prescribing that “[t]he parents’ right to the custody of their child shall not prevail when the court determines that it is contrary to the health, safety, and best interests of the child” (705 ILCS 405/1-2). Since the current system has been set up to respond primarily to emotional and physical neglect and abuse by caretakers, often the specific needs of CSEC are disregarded. Even though the system also handles sexually abused minors, the sexual exploitation of a trafficked minor presents unique challenges (Walts et al., 2013, p. 5),⁷ and in reality, few resources exist that address child trafficking in the context of child welfare.⁸ Additionally, much of the response to human trafficking has failed to examine the distinct needs of children.⁹

The effective implementation of ISCA is also compromised by a lack of both screening procedures and training in child protection courts. To adequately address the particular needs of sexually exploited youth, professionals working with children impacted by safe harbor legislation and anti-trafficking laws in Illinois must develop competency in working with CSEC in the context of the child welfare system. Specifically, the child welfare system should better equip its legal actors and social work professionals both to identify trafficked victims through updated screening procedures and to work with trafficked victims as a distinctive population. Additionally, due to its complexity, the child protection system would benefit from genuine cooperation and collaboration between

⁷ Walts et al. (2013) notes the “limited number of training programs [that] address a practical course of action once a victim is identified, and fewer that focus on the specific needs of children” and “dearth of training program [sic] that address the various categories and forms of legal relief... that a single child trafficking victim may require” (p. 5).

⁸ For example, of the respondents to a survey of legal and social service providers of trafficked victims in Cook County, most “provided very limited quantitative data on the profile of child trafficking victims.” Additionally, no respondent offered quantitative data about the type of trafficking (sex, labor, or both), how long the child was trafficked, where the child was trafficked, or who the trafficker was in relation to the child (Walts et al., 2013, p. 19).

⁹ Most research includes adult women in the same group as children. A child’s unique needs include, but are not limited to, representation in juvenile proceedings, guardianship proceedings, special immigrant juvenile status, and other concurrent crimes against children (Walts et al., 2013, pp. 5, 13).

professionals in the legal and social service arenas.

This article will explore the role of guardians *ad litem* and of social workers in child protection court, and also will consider DCFS's most recent developments in trafficking awareness. The State of Illinois would profit both from the inclusion of the ideas presented as well as their expansion, including the introduction of consistent and mandatory training on identifying and providing support for commercially sexually exploited youth already in juvenile court.

Capacity Building of Advocates within Child Protection Court

The Importance of Trafficking-Informed Policies and Procedures

The National Criminal Justice Survey notes that “[e]xisting service systems, particularly child welfare, are not usually coordinated and leveraged to deal with the complex service needs of [the trafficked] population” (Farrell et al., 2012, p. 191). Professionals who interact with potential victims of trafficking should be aware of the signs of a trafficked child so there can be a collaborative effort in supporting CSEC and in ultimately providing appropriate resources and placement. Under the Illinois Juvenile Court Act, “allegations of abuse and neglect are *sui generis*,¹⁰ and must be decided based upon their unique facts” (*In re Arthur*, 2004, p. 747).¹¹ Thus, it is especially critical for legal advocates to be able to understand how the circumstances of sex trafficking should shape the outcome of a child protection case and to be able to present this evidence to the court. With proper education for both legal professionals and social workers, child protection court can be one avenue through which trafficked youth receive much needed services.

Current Screening Procedures and Recommendations for Improvement

While the scope of child sex trafficking is wide, the data on trafficking is incomplete and

does not account for the fact that many instances are likely unreported.¹² The first step in improving the child protection court system is arming advocates with the ability to identify CSEC as they come into the system, *as well as* later on, once youth are already involved in child protection proceedings and social services. This effort begins with effective and recurrent screening protocol (National Center for Victims of Crime, 2012, p. 2). Currently, the child welfare system as a whole lacks consistent, mandatory training statewide on trafficking for professionals who interact with youth (705 ILCS 405). This section will narrowly focus on the screening protocol for DCFS caseworkers and for guardians *ad litem*, highlighting examples from Cook County.

In all counties in Illinois, DCFS is relied on to screen youth coming into the system (325 ILCS 5/7). Thus, if the DCFS child protection (DCP) investigators do not undergo extensive preparation, they will not be prepared to identify potentially trafficked youth. Lack of preparation risks CSEC attending court without their essential personal history being relayed to the guardian *ad litem* and caseworker, leading to the possibility that the trafficked youth might pass through the system with their unique needs unnoticed.

Currently, there is no formal universal DCFS screening tool for identifying potentially trafficked children (S. Sloan, personal communication, June 27, 2014). Nor is there an unusual incident indicator for trafficking on the form DCFS caseworkers use concerning their clients during the course of a child protection case (S. Sloan, personal communication, June 27, 2014).¹³ Instead, the most common

¹² “[T]here are no standardized mechanisms or measurement tools for data collection on child trafficking within the country” (Walts et al., 2013, p. 18). Further, the current system collects data from prosecutors and law enforcement, while not all trafficking cases are prosecuted or even reported (Walts et al., 2013, p. 18).

¹³ While Sloan does not see a need for a universal screening tool at this time due to the new allegation system and other procedures in place, she points to the lack of an indicator for sex trafficking on the standard unusual incident report (UIR) as an area for improvement in the internal DCFS system. Per DCFS Procedures, the purposes of a unusual incident reporting are to “communicate quickly about critical incidents or circumstances that present risks to children and youth, staff or others; alert others of events and/or actions that may be required; and track incidents for trend analysis and to determine whether

¹⁰ Legal term meaning “of its own kind”

¹¹ *Sui generis*, in this context, means that each case will be evaluated individually and decided on its own unique facts.

circumstance where trafficked youth are identified is once they are already in the court system for other reasons, such as parental abuse or neglect, and a suspicious conversation that indicates trafficking arises (DCFS Procedures 331).¹⁴ It is equally important that guardians *ad litem* are knowledgeable about trafficking in order to adequately represent potentially trafficked child clients. Ongoing education is critical for attorneys to understand trafficking as a domestic issue and to be informed on new laws and regulations in this field. If the caseworker and the guardian *ad litem* are aware of the signs and possibility of trafficking, then they will be more equipped to identify when exactly a conversation warrants suspicion of trafficking.

Furthermore, since foster children are especially at risk, all professionals working in child welfare should be equipped with the knowledge and resources necessary to address trafficking as a barrier to stable placement. Due to the high likelihood of trafficking within the foster care population, DCFS should also abolish the goal of “other permanent living arrangement” for foster care youth (Illinois Administrative Code, §315.130). Youth in care require the stability of an identifiable placement for their well-being, as traffickers often seek out youth without a stable home (Walts et al., 2013, p. 12).

Two recommendations for both legal guardians *ad litem* and DCFS workers statewide are trafficking specific, trauma-sensitive questions when screening clients as well as general training on trafficking. These initiatives would help enable professionals to recognize indicators of sex trafficking in client rapport-building. Appropriate questions on screening forms should consider general markers of trafficking outlined by reputable anti-trafficking organizations such as the Polaris Project.¹⁵ In developing these inquiries, professionals must be acutely aware of the sensitive nature of trafficking in that the child most likely will not identify her “pimp” as such and likely will not see herself as a “victim of trafficking” (DCFS Procedures, 2001, p. 2). Instead, the child might have a boyfriend who offers her gifts and asks

her to do sexual favors for him or his friends in return, or a relative who houses her in exchange for work at his club (Walts et al., 2013, p. 40). In developing interview-screening questions, advocates can also refer to the American Bar Association’s publication on Child Trafficking (Klain & Kloer, 2009, p. 15; Center for the Human Rights of Children, 2011). These same questions will be useful in discovering trafficking once the advocate has an established personal relationship with the client and his or her trust (Klain & Kloer, 2009, p. 15). Examples of the types of questions for child welfare professionals to employ include, but are not limited to, the following:

Were you told to do anything you did not want to do?

Did anyone promise you something if you did? Were you paid? Did you get to keep the money? Were you ever afraid? If yes, why? Were you able to talk to your family or friends? (Klain & Kloer, 2009, p. 15).

Professionals who screen child clients should be especially attentive to their client since concurrent – but distinct – crimes frequently occur with trafficking, including child labor violations, child sexual abuse, child pornography, domestic violence, and child abuse and neglect generally (Klain & Kloer, 2009, p. 10). Moreover, professionals should be acutely aware of the psychological impediments that they may experience when interviewing CSEC, as many child victims have suffered previous physical, psychological, or sexual abuse.¹⁶

Another significant recommendation is periodic screening for children already involved in the child welfare system, in an effort to prevent youth from suffering further abuse at the hands of a trafficker. Youth who are already in the child protection system are at a higher risk of sexual exploitation in the trafficking arena (ACYF, 2013, p. 4). According to the U.S. Department of Health and Human Services, “70 percent to 90 percent of commercially sexually exploited youth have a history of child sexual abuse” (ACYF, 2013, p. 4). Moreover, as previously noted, traffickers often target group homes and foster placements where youth without stable placements can be found (ACYF,

modifications are needed to improve the quality of services” (DCFS Procedures 331).

¹⁴ A child client’s caseworker documents all unusual incidents (documented in Unusual Incident Reports [UIRs]).

¹⁵ Examples include the child avoiding eye contact, exhibiting unusual fear after bringing up law enforcement, and being unable to clarify his/her personal story (Polaris Project, 2014c).

¹⁶ This is critical to understand both at a professional level and a personal level, as child trafficking victims may be reluctant to trust the interviewer, or conversely, display a constant need to please the interviewer (Klain & Kloer, 2009, p. 12).

2013, p. 4). These risk factors highlight the importance of periodic screening and rapport building with all children in child protection court.

Recommendations for Improved Training Procedures

However, screening by itself will not be effective unless child advocates are appropriately trained in trafficking, particularly because the signs that indicate trafficking are often the same signs that generally indicate abuse and neglect (Polaris Project, 2014c). Only professionals equipped with specialized knowledge about trafficking will be adept at effectively distinguishing between signs of more commonly identified abuse of a caretaker and abuse at the hands of a trafficker.

The Juvenile Court Act mandates the appointment of a guardian *ad litem* in all child protection proceedings (705 ILCS 405/2-17). Thus, training of guardians *ad litem* with respect to trafficking is essential because they are the attorneys who maintain regular and personal contact with child clients and need to be able to identify victims once they have already passed through DCFS screening. Though there may be limited training in the area of trafficking for some agencies, there is a need for expanded and consistent training, including the introduction of a trafficking-only specialist. A trafficking specific series should be incorporated into internal training protocol in all agencies throughout Illinois, providing guardians *ad litem* with the tools for competent interviewing and best practices for interaction with CSEC clients.¹⁷ When guardians *ad litem* understand how commercial sexual exploitation affects their client, they will be in the best position to advocate their child client's best interest.¹⁸

¹⁷ Organizations such as the Salvation Army produce training manuals for service providers and may be a place to begin in developing procedure (Salvation Army, 2014). Additionally, the National Center for Victims of Crime (2012) recommends that national and state membership organizations for officials in the juvenile justice system head the process (p. 3).

¹⁸ Best recommendations to the judge may include 1) ensuring that the DCFS Trafficking Coordinator is notified and involved in the case and 2) ordering trafficking-focused counseling and other specific services to the client, including referrals to the STOP-IT Program or the Dream Catcher Foundation (Dream Catchers Foundation, 2014; Stop It, 2014).

Guardians *ad litem* can then serve as models for other legal actors in the court, such as the State's Attorneys and defense counsel, as all legal actors within the child welfare system would benefit from CSEC training. Training for counsel is particularly important because the judge or other counsel on a case may be unfamiliar with cases of sexually exploited youth. Further, all legal actors play an important role affecting the child client. For instance, the Assistant State's Attorney screens a child protection case by interviewing the investigator from DCFS before deciding whether evidence is sufficient to file a petition with the court.¹⁹ This provision makes the State one of the forerunners in identifying trafficking, and the screening procedures discussed would also be relevant in the State's Attorney's Office internal training.

The Importance of Collaboration and Cross-Training

Another major issue is the need for collaboration among social service professionals. DCFS training on trafficking is mandatory and available online for child protection investigators and caseworkers to complete (S. Sloan, personal communication, June 27, 2014). DCFS has trained hundreds of staff throughout the State, but the project is both underfunded and severely under-staffed to realize more expansive in-person training within the Department at this point (S. Sloan, personal communication, June 27, 2014).

Perhaps most important in the development of competency among professionals working with CSEC is cross-training among professionals on a larger scale. Fortunately, Cook County has developed a Human Trafficking Task Force,²⁰ wherein professionals from various professions can collaborate toward positive change in providing legal remedies and social services to victims (S. Sloan, personal communication, June 27, 2014). Created in 2010, this coalition began specifically through the efforts of the Cook County's State's

¹⁹ If the State's Attorney proceeds with bringing the petition to court, the case is accepted only if the judge concludes, among other things, that probable cause of abuse, neglect, or dependency exists (720 ILCS 5/4-13).

²⁰ The Cook County Human Trafficking Task Force, cookcountytaskforce.org. Ideally, there would separate task forces for children and for adults (S. Sloan, personal communication, June 27, 2014).

Attorney Office, the United States Attorney for the Northern District of Illinois, the Salvation Army STOP-IT program, and the International Organization for Adolescents (S. Sloan, personal communication, June 27, 2014). The Task Force serves as a multidisciplinary bureau that brings law enforcement, social service agencies, and legal professionals to a common forum to discuss and tackle human trafficking cases (J. Greene, Cook County State's Attorney Policy Advisor/Cook County Human Trafficking Task Force Member, July 16, 2014). One of the greatest benefits of this organization is the ability for social service providers to unite and share ideas, as well as for attorneys and social workers to collaborate (S. Sloan, personal communication, June 27, 2014).

The Task Force also includes active subcommittees, including those focusing on victim outreach and victim services, and the Salvation Army STOP-IT program is the only service agency in the northern region of Illinois that provides a 24-hour crisis hotline for trafficking (J. Greene, personal communication, July 16, 2014). Fortunately, the Cook County Human Trafficking Task Force has provided technical assistance in a few other counties' efforts to set up their own Task Forces.²¹ Nevertheless, while the Task Force is a burgeoning organization in Cook County, there is still an absence of such committees in most suburbs outside the city and throughout the State (S. Sloan, personal communication, June 27, 2014).²²

In all Illinois jurisdictions, particularly those without training for professionals who may come in contact with CSEC, certain improvements would help jettison the goals of identifying and protecting CSEC. Because of DCFS's large role in identifying youth, it is critical for DCP investigators to be informed that trafficking is a real domestic issue and to be capable of responding appropriately to youth who are trafficked.

²¹ The Cook County Task Force has provided this assistance in areas including Kankakee and Northwest Indiana (J. Greene, personal communication, July 16, 2014).

²² Stacy Sloan opines that the organization STOP-IT for trafficking victims is perhaps the most valuable resource missing downstate. STOP-IT provides social services, including but not limited to trafficking victim identification, crisis intervention, counseling, referrals, and community outreach (Stop It, 2014).

Goals in Working with Sexually Exploited Youth

Studies have found that children in foster care represented by trafficking-informed legal counsel experienced numerous positive results, including higher exit rates from foster care to permanency, higher rates of adoption and long-term custody, and higher rates of reunification with family (Walts et al., 2013, p. 16). Similar outcomes are probable if CSEC also have access to competent counsel. Professionals working with CSEC should have three specific goals in mind: assisting clients in leaving the trafficking situation, reuniting them with family where possible, and providing the trafficked victim and their family with services. Because assisting CSEC in leaving the trafficking situation will differ on a case-by-case basis, it is imperative that advocates develop a relationship with their clients and learn what additional services they might need to accomplish the first goal.

Professionals will best meet the first objective if they work collaboratively and consider multiple resources that will allow the child a safe place to turn once he or she breaks ties with a trafficker. Because trafficking-specific services are few and far between, legal advocates for CSEC must be aware of social services themselves so that no option is overlooked. If the guardian *ad litem* is well equipped with resources for the child client, he or she will be able to direct DCFS or the judge to the available sources, and vice versa (705 ILCS 405/2-17). This interdisciplinary approach will allow the child protection court to work as a unit for the victim and afford him or her appropriate protection and support. The American Bar Association notes that child advocates should be knowledgeable and prepared to work with the state's child protective system, or DCFS and its assigned private agencies in Illinois (Klain & Kloer, 2009, p. 30). In particular, the attorney representing the child should be able to assist in obtaining social services, immigration status, and best placement for the child (Klain & Kloer, 2009, p. 30).

Even when children have access to social service support, they may "get 'lost' in the system...[including] children being hindered by changes in custody or placement for the child within the child welfare system" (Walts et al., 2013, p. 26). Advocates should be particularly

wary of this danger for CSEC because of the high risk of trafficking for children in foster homes and similar placements. Moreover, trafficked youth who do not receive appropriate assistance and promised remedies from legal counsel or their caseworker may feel as if they have nowhere to turn, and return to their trafficker (Bergman, 2012, p. 1394). Improving procedures is critical to helping end the cyclical nature of commercial sexual exploitation. The Administration for Youth, Children, and Families reiterates the idea that timely, trauma-focused services are likely to help break the cycle of the child running away and of repeated abuse (ACYF, 2013, p. 7). The increased likelihood of traffickers to exploit at-risk youth “indicate[s] the critical role child protection professionals have in *preventing, identifying, and protecting* youth who are targeted by human traffickers” [emphasis added] (ACYF, 2013, p. 3).

Another important task for recommendation is reuniting the trafficked child with family, when possible. Considering the first goal of child protection court is reunification with family (705 ILCS 405/2-28(2)), several legal options are in place to mend the family unit. Still, the child protection system needs to offer expanded services for CSEC and their families, particularly in the cases of child sex trafficking. If parents were unaware of the trafficking or did not actively prevent it from occurring, a goal to return home may still be a possibility, but the court should work with the family as a unit. Specifically, there is a need for direct services for the parents of CSEC, as well as the clients. If the court merely orders return home without services particular to the trafficking problem, there is nothing preventing the trafficking cycle from recurring. The development of trafficking specific services increases the likelihood of breaking the cycle (Walts et al., 2013, p. 16). Specifically, the family would benefit from involvement in education of how trafficking operates and from family counseling so that they are informed of how to guard their child against re-victimization.²³

Educational training on CSEC indicators for parents is important, particularly for teens who return to their parents or maintain a relationship with them. Thus, parents need to

²³ This recommendation also speaks to the importance of awareness of the Office of the Public Defender and other defense counsel on the issue of trafficking.

be aware of warning signs even when the legal goal for the child is independence. Education for parents is also crucial for the trafficked child’s siblings who are still in the custody of the parent.

If the goal of returning home is not an option for the trafficked child, the social worker and guardian *ad litem* must be in informed positions to recommend to the judge what is the best direction and ultimate placement.²⁴ A gap of which a guardian *ad litem* must be aware is that DCFS often will not have any foster homes or residential treatment homes for trafficked victims specifically.²⁵ The major remaining options include private guardianship, adoption, or independence. Placement determination is a case-by-case issue, and each child may react differently to being a victim of trafficking. In the meantime, the child may be claimed as a dependent minor, where the state of Illinois becomes the legal guardian and the child is placed in foster care or residential placement (705 ILCS 5/2-3). These placements all may present challenges, and advocates need to take responsibility for understanding the cyclical nature of trafficking so that they can recommend the most sustainable option to the court.

Additionally, all advocates should be responsive to the immediate needs of their clients so that they can offer referrals if gaps exist in court-ordered social services.²⁶ To date, DCFS has recently outlined several services to assist youth who have experienced trafficking; among the services offered include medical examinations, mental health and trauma assessments and services, and further clinical consultation (DCFS, 2001, pp. 11-13). Other services may include referrals to medical personnel or other professionals for physical problems due to repeated abuse, reproductive health problems, malnutrition, mental health

²⁴ Note that this recommendation is limited to the *type* of placement that is appropriate. A judge may not order a *specific* placement.

²⁵ Currently, Anne’s House is Illinois’s only long-term, trauma-informed placement for women and girls who have been trafficked, but DCFS does not have a contract with this placement (Salvation Army, 2014b). Stacy Sloan is unsure whether a trafficking-specific placement is always appropriate. However, another issue to consider is trafficked youth recruiting other trafficked youth “into the life” if CSEC are placed together in the same residential facility (S. Sloan, personal communication, June 27, 2014).

²⁶ The American Bar Association guide provides additional resources and referrals for attorneys working with CSEC (Klain & Kloer, 2009, p. 33).

issues, or substance abuse developed during trafficking (ACYF, 2013, p. 6).

Conclusion and Challenges

As discussed, guardians *ad litem* and caseworkers are in the best position to develop relationships with their CSEC clients and to make recommendations to the court on suitable services and placement. Nevertheless, such recommendations will be fruitless without the appropriate training for guardians *ad litem* and social workers in the child protection context. Ideally, this training would extend to all legal actors in child protection court on what commercial sexual exploitation is, education on how sex trafficking operates, and education on how the experience of sex trafficking may impact a client's options and outcomes. Guardians *ad litem* and social service workers across the state need to initiate periodic trauma-sensitive screening to identify trafficked youth once they are in the child welfare system. Policy-makers also need to establish consistent mandatory training on working with CSEC and their families. Finally, professionals working with CSEC in child protection court should be aware of various other legal and social service remedies potentially available for their clients.

Other Remedies Advocates Should Consider for CSEC²⁷

Guardians *ad litem* specifically should be cognizant of all legal claims to which their clients may be entitled. For example, an immigrant client may be eligible for a T-Visa, which grants permanent residency and protections for survivors of trafficking (National Immigration Project, 2013, §3:130). Many CSEC clients may also need protective orders, especially since the child client may not be in a position to maintain safe distance from her trafficker alone (Klain & Kloer, 2009, p. 26). CSEC clients might benefit from an order of protection for her child, as well, if she became pregnant by her trafficker (Klain & Kloer, 2009, p. 12). As an additional remedy, professionals working with CSEC youth need to “ensure that prosecutors and judges have the information they

²⁷ All of these additional issues and remedies are important to note, but in-depth discussion of them is beyond the scope of this article.

need to maximize a restitution order²⁸ on behalf of children” (Center for the Human Rights of Children, 2011, p. 87).

Potential Limitations and Challenges

The recommendations in this article do not come without limitations and obstacles. It is imperative for professionals within the child protection system to understand these challenges so that they can work to overcome barriers for the best interest of CSEC within the court.

First and foremost, funding or operational limitations often inhibit the realization of expanded training and victim services (S. Sloan, personal communication, June 27, 2014). In particular, government and legal aid agencies often already have full caseloads and limited time and staff to implement intermittent screening and re-interviewing of children already in the system.²⁹ Moreover, legal advocates by definition are limited in services they can offer. Often they can only make referrals to social service agencies, and it is up to the judge's discretion to mandate services (Illinois Administrative Code, §302). Nevertheless, all professionals interacting with CSEC youth should strive to discover creative means to incorporate periodic screening and trafficking-specific training into internal programs already in place so that they are as informed as possible to make the best recommendations to the court. These proposals are paramount to identification of trafficking so that the cycle of abuse does not bring sexually exploited children back into the system.

Another significant issue is that “child welfare services [are] available only to youth who have petitions filed in the Child Protection Division of the Circuit Court of Cook County, which may not apply to all trafficked children seeking services” (Waltz et al., 2013, p. 26). Though this concern is beyond the scope of this article, mending the way child protection courts respond to CSEC will not cure the problem of commercial sexual exploitation nationally.

²⁸ A restitution order is a legal order requiring financial compensation from the trafficking perpetrator to the victim.

²⁹ While some private attorneys or other guardians *ad litem* are able to attend numerous family and school meetings, it is arguably impractical or impossible for all attorneys, especially in smaller and more rural counties, to do the same.

Finally, there is need for further children-focused research on sex trafficking in order to knowledgeably create and discover options most appropriate for children involved in trafficking as a separate cohort from adults. Additional research should additionally distinguish the unique needs of younger children and adolescents. Such research would benefit all professionals working to combat sex trafficking.

The aforementioned issues should be viewed as challenges to be addressed, rather than insurmountable impediments. Professionals who work in child welfare must remain hopeful, making progress in training and trafficking-informed policies a priority. Only then will the child clients with whom they encounter discover hope for a changed future.

Sharon L. Falen is a senior law student at Loyola University Chicago. While earning her BA at the University of Illinois at Urbana-Champaign, Sharon engaged in several legal and social work internships and has since committed herself to advocacy for children. During law school, she has worked in the Child Protection Division of Cook County Juvenile Court in various capacities, including as a judicial intern and Court Coordinator for Circuit Court Judge Marilyn Johnson and later as a 711 extern with the Office of the Public Guardian. She has also worked in a private law office defending parents' rights and volunteered with CGLA and LAF, legal aid organizations serving financially underprivileged clients in Cook County. In her final year of law school, Sharon is part of the Board of the Children's Legal Rights Journal and works in Loyola's Child Law Clinic. Upon graduation, Sharon aspires either to represent youth in abuse and neglect cases or to serve as a guardian ad litem in contested divorce proceedings.

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Re-Entry and Drug Courts: Effective Interventions to Reduce Recidivism

Robert A. Herman, MSW

Abstract¹

This paper will demonstrate that re-entry and drug courts are an effective intervention to reduce recidivism rates and help improve the cognition of individuals on supervised release. A special emphasis will be placed on the United States federal judiciary and further explore how social work and law unite in a criminal justice environment. The paper will delineate that re-entry courts, a post-conviction diversionary program, is an effective modality to alleviate disparities in the criminal justice system and reduce expenditures required for incarceration and community supervision. A cost-benefit analysis has been included to provide a framework to understand this area of focus more fully. Supporting literature in the form of evidence-based practices will confirm the need to expand the re-entry court initiative nationwide. Finally, the paper will conclude transition and systematically examine a re-entry court program based in Chicago, Illinois.

Keywords: Re-entry courts, recidivism rates, cognition, supervised release, federal judiciary, social work, law, criminal justice system, post-conviction diversionary program, incarceration, community supervision, cost-benefit analysis, evidence-based practices

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Introduction

Re-entry and drug courts are proven to be a beneficial component of the complex criminal justice system through both overall cost-savings and the ability to ease the reintegration process for individuals on supervised release. “Supervised release is defined as “a sentencing option adopted in addition to the sentence of imprisonment given by the state, provincial or federal court to the guilty” (Supervised Release, n.d.). This was created by the Sentencing Reform Act of 1984 “as an alternative to parole and probation for federal offenders” (Supervised Release, n.d.). Drug courts are typically defined as a diversionary program and popular alternative to incarceration, whereas re-entry courts are a post-conviction diversionary program that do not substitute time served in a federal penitentiary.

The purpose of this paper is to shed light onto re-entry and drug courts by including empirical research to support the need to increase such initiatives nationwide while also promoting the implementation of social workers onto existing and future court staff. Finally, the paper will conclude with an in-depth analysis of a re-entry court program based in Chicago, Illinois.

Background Information on U.S. District Courts

Prior to assessing re-entry and drug courts, it is imperative to gain a better understanding for how the United States District Court system operates. The federal court system includes thirteen circuits and ninety-four U.S. District Courts. The trial courts, an arm under the federal judiciary, handle all federal civil and criminal complaints (“District Courts,” n.d.). The United States District Court, Northern District of Illinois, along with Indiana and Wisconsin fall under the purview of the Seventh Judicial Circuit.

The state of Illinois has three judicial districts; however, for the purpose of this paper only the Northern District of Illinois will be discussed. The Northern District of Illinois is

further broken up into an Eastern and Western Division (observation, January 6, 2014). The city of Chicago and Cook County are part of the Eastern Division; whereas, the city of Rockford and the surrounding counties comprise the Western Division (observation, January 6, 2014). Separate courthouses and staff run daily operations independently at both locations.

Literature Review

In order to understand the true cost-savings provided by re-entry and drug courts in America, it is imperative to explain the term recidivism. According to Marlowe (2010), the reduction of recidivism is “typically measured by fewer re-arrests for new offenses and technical violations” (p. 1). Arresting and charging someone who has committed a crime puts a tremendous strain on already feeble resources. The severity of an offense and whether the defendant was let out on bond has an impact on how much money is spent to house, adjudicate and supervise that individual. In recent years with budget cuts, agencies have been forced to do more with less.

Reducing recidivism rates on non-violent drug related crimes is important because it allows for limited resources to be applied toward the most serious law-breakers. According to the Legal Information Institute, the term ‘nonviolent offense’ means “an offense that does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another or is not a felony that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.”

Subsequent to examining the effects that re-entry and drug courts have on reducing recidivism rates and the average cost-savings that accompanies such measures, it is apparent that a paradigm shift from a once “tough on crime” approach has begun to move away from its one-size-fits-all model. As a result, the new methodology has acknowledged that it will begin to eliminate some of the disparities in the U.S. Sentencing Guidelines that stemmed from the Sentencing Reform Act of 1984.

The Sentencing Reform Act of 1984 established the United States Sentencing Commission as an independent commission within the judicial branch of government. The commission is

responsible for developing guidelines that prescribe a range of sentences for federal judges to use in criminal cases. According to the statute, the guidelines are intended to establish fairness in sentencing, to prevent disparities in the sentencing of similar defendants, and to reflect the “advancement in knowledge of human behavior as it relates to the criminal justice process.” The act also indicated that the guidelines should reflect the seriousness of the crime, deter other criminal activity, and protect public security (Federal Judicial Center, n.d.).

Racial disparities within the criminal justice system have been widely publicized in recent years, especially in light of the Fair Sentencing Act of 2010, which reduced the crack cocaine gap from 100 to 1, to a more reasonable 18 to 1 level (Grindler, 2010). While still disproportionate, it shows that changes have started to combat some of the racially biased sentencing decisions that exist in the federal judiciary to date. The controversial issue has continued to gain steam amid bipartisan support, which has fostered amendments to some of our nation’s mandatory minimum sentences that focus on non-violent, drug related crimes.

It is no secret that America has had and continues to have the highest incarceration rate in the world. In fact, “one out of every one hundred American adults is behind bars” (Ortega, 2014). *The Washington Times* reports that “the U.S. spends more than \$80 billion a year on corrections” and “\$6.4 billion annually to maintain prisons” (Howell & Riddell, 2014). According to the Federal Bureau of Prisons population statistics, U.S. Prisons house 214,365 federal inmates as of September 25, 2014 (Federal Bureau of Prisons, 2014). Former state senator Dan Liljenquist (2014) wrote”

By being “Tough on crime” through mandatory sentences, legislators have strained the corrections system, compromised the safety of both prison guards and inmates, and diverted precious resources from law enforcement and crime prevention towards incarcerations. The Federal Bureau of Prisons is operating at nearly 40 percent above capacity, and is costing us about \$29,000 per year to lock-up each federal inmate. Incarceration and detention costs eat up nearly a third of

the Department of Justice's discretionary budget (p. 2).

Research reports that on average, when offenders are treated in Drug Courts, criminal recidivism rates are reduced by an approximate average of 8 to 26% (Marlowe, 2010). The Attorney General's SMART on Crime Initiative has shown that since re-entry court initiatives have been implemented nationwide, that expenditures for incarcerating and supervising this cohort have gone down markedly. For example, "during fiscal year 2013, the department awarded \$62 million in Second Chance Act grants to help incarcerated adults and youth rejoin their communities and become productive, law abiding citizens. These grants to state, tribal and local governments and non-profit organizations support reentry strategies that include not only evidence-based corrections and supervision strategies, but also employment assistance, housing, mentoring, substance abuse treatment, family programming, and other services designed to reduce recidivism" (USDOJ, 2014).

According to Mirchandani (2008), "The drug court attempts to serve both a public health interest and a criminal justice interest by improving the well-being of an addicted individual while also reducing criminal behavior through the creation of moral citizens" (p. 6).

Since their introduction, re-entry courts have shown positive results that have and should continue to spark public interest. In April 2008, President George W. Bush signed into law the Second Chance Act, which allocated \$362 million dollars to assist with recently released prisoner's reintegration back into society (John, 2014). The literature stipulates, "Since the introduction of the first drug court in Miami, Florida in 1989, there are more than 2,500 programs nationwide. As of FY2012, President Obama's budget included \$101 million for drug and related problem-solving courts" (Sevigny, Pollack & Reuter, 2013, p. 3).

Cost-Benefit Analysis

The National Association of Drug Court Professionals (NADCP) found the following: "For every \$1.00 invested in drug courts nationwide, taxpayers save as much as \$3.36 in avoided criminal justice costs alone" (NADCP, n.d.). While the above numbers fluctuate based on the scope of a particular study, it should be noted that "Drug courts produce costs savings

ranging from \$3,000 to \$13,000 per client. These cost savings reflect reduced prison costs, reduced revolving door arrests and trials, and reduced victimization" (NADCP, n.d.). The above research accurately depicts the cost-effectiveness that re-entry courts have had nationwide. Recidivism rates are also closely correlated to the numbers, which shows "Nationwide, 75% of drug court graduates remain arrest-free at least two years after leaving the program" (NADCP, n.d.).

The United States Sentencing Commission (USSC) reported that the proposed amendments to reduce mandatory minimum sentences on non-violent drug traffickers "would affect about 70% of federal drug trafficking defendants and would result in an average sentence decrease of 11 months" (Smith, 2014, p. 2). These amendments would not only save additional taxpayer dollars, but further the need for re-entry courts nationwide.

The ability for individuals who have been sentenced to a period of incarceration to get out of prison early poses issues involving community safety and increased workloads for many criminal justice professionals, most notably probation officers, attorneys and judges. The issue of mandatory minimum sentences, however, has been taken into consideration by the USSC, U.S. Justice Department and Federal Bureau of Prisons. Congress is now deliberating on the issue of whether or not it wants to pass the legislation to decrease mandatory minimum sentences for non-violent drug related offenses and has until November 1, 2014 to reach a decision.

Howell & Riddell's (2014) study found the following:

Coming amid bipartisan efforts to better manage corrections, the amendment is expected to reduce the federal prison population by 3 percent – or 6,550 inmates – over the next five years by lowering the average sentence for certain drug traffickers by about 11 months (p. 1).

This finding is significant because it supports a shift in thinking from a punitive law enforcement approach, to a more structured treatment and services focus, which is further tailored to meet the needs of defendants, offenders and victims.

Re-entry and drug courts have demonstrated that they can assist a vulnerable at-risk population by providing them with a highly structured environment, along with the necessary resources to enable them to gain the knowledge

and skills that translate to a law-abiding life. Some re-entry court initiatives have used a wraparound and rehabilitative services model, and according to Carey, Mackin, and Finigan (2012), “programs with such wraparound services avert rearrests and save taxpayer money in the long run when they address participant needs such as relapse prevention, gender-specific services, mental health treatment, parenting classes, family counseling, anger management classes, health and dental services, and residential care” (p. 37).

Re-Entry Court Program Model in Chicago, Illinois

²In April 2010, the Northern District of Illinois’ Eastern Division introduced the James B. Moran Second Chance Re-Entry Court Program (K. White, personal communication, May 13, 2014). The re-entry court program is located in the Dirksen Federal Building in Chicago’s downtown loop and was designed to assist individuals on federal supervision with challenges associated with substance abuse by providing them with services and support not offered to the typical client on supervised release. (K. White, personal communication, May 13, 2014).

Subsequent to serving a period of incarceration, the individual will serve a term of supervised release that follows guideline provisions instituted by the USSC (K. White, personal communication, May 13, 2014). The defendant’s sentence will also take into consideration the Federal Rules of Criminal Procedure, relevant case law, and how the sentencing judge interprets the facts of the case (K. White, personal communication, May 13, 2014). Upon release from the Federal Bureau of Prisons or a half-way house facility, the case is then managed by a U.S. Probation Officer and assigned to a presiding judge (K. White, personal communication, May 13, 2014).

² The duration of this paper will focus on a re-entry court program in Chicago, Illinois. The program’s structure will be examined to assist the reader to better understand how the re-entry court model is applied to individuals on supervised release. It should be noted that the program being discussed is just one re-entry court model and that other similar programs being implemented nationwide vary depending on funding and leadership styles.

C.H.A.N.C.E. Program

James B. Moran, the former Chief Judge for the U.S. District Court, Northern District of Illinois, was a major proponent for re-entry court initiatives and started Chicago’s pilot program in 2010 (K. White, personal communication, May 13, 2014). The team of professionals involved in the participant’s reintegration process includes one U.S. District Court Judge, two U.S. Magistrate Judges, representatives from the U.S. Probation Office, U.S. Marshals Service, and attorneys from the Federal Defender Program and U.S. Attorney’s Office (observation, January 9, 2014). A social work intern from the Federal Defender Program also assists the team to help fulfill the programs mission and goals (observation, January 9, 2014). Prior to Fall 2013, a drug treatment specialist was also involved in team decisions, however, was involuntarily terminated due to the most recent sequester, which forced budget cuts across the board, stemming from the 2008 recession (K. White, personal communication, May 13, 2014). It should be noted that the court staff described above volunteer their time and energy and are not reimbursed for their efforts, which in turn creates an altruistic environment (observation, April 17, 2014).

The Court Help Assistance Network for Community Entry (C.H.A.N.C.E) program provides judicial intervention, intensive treatment, and supervision to individuals who have committed federal crimes and find their lives unmanageable due to past substance abuse (K. White, personal communication, May 13, 2014). The program also consists of four levels that participants can progress through in order to complete the program and each level has a minimum and maximum amount of time that a participant has to complete it (K. White, personal communication, May 13, 2014). Homework assignments are required for each level and will be distributed to the entire court staff upon receipt by the probation officer. The assignments are a tool to measure a participant’s motivation, gauge their progress, and promote accountability (K. White, personal communication, May 13, 2014).

The fastest an incumbent can complete the program is 12 months, however, it typically takes between 18-24 months to finish. This timeframe is due to unplanned absences, such as a doctor’s appointments, sick days and work conflicts. The program also requires that the individual and court staff meet twice monthly (K.

White, personal communication, May 13, 2014). On days when court is in session, staff meets in the chief judge's chambers at 8:30am to go over program placement and confer on proposed advancements and/or sanctions. The probation officer is required to offer the rest of the court team with an update on each participant's progress by providing a synopsis from the previous two-week period in a succinct and objective report (K. White, personal communication, May 13, 2014). Subsequently, the court team provides suggestions and feedback for each participant and vote on if they feel a reward or sanction is warranted based off of the information disseminated by the probation officer, other court staff and after hearing from the participant themselves (observation, March 20, 2014).

Participants are required to arrive promptly at 10:00am on the first and third Thursdays of the month. Additionally, participants are required to stay for its entirety until all other participants in attendance have updated the team and fellow participants on their recent progress (observation, March 20, 2014). Court terminates at approximately 12:00pm. Attendance is mandatory to proceed to the next level of the program unless the participant was previously exempt by the court staff due to an excused absence that involves a work or medical conflict. All excused absences are cleared at the discretion of the presiding judges (observation, March 20, 2014).

Other criteria, such as the participant's candidness can have an impact on sanction outcomes. The judges have also been known to call for a caucus during court sessions, in which case, the court staff exits the courtroom temporarily to discuss how they feel about the participant's truthfulness and attitude towards the potentially problematic issue. A decision will then be made by the staff and conveyed to the participant in open court (observation, April 3, 2014). "Drug courts where sanctions were imposed immediately after noncompliant behavior had 100% greater cost savings" (Carey, Mackin, & Finigan, 2012).

Program Benefits

When the re-entry court participants make positive life choices and meet all requirements set forth by the court, incentives are awarded. Incentives include but are not limited to five-dollar Subway gift cards, certificates of completion for advancing a level in the program

and day to weekly public transportation passes. The largest and most popular incentive is the one-year reduction in a participant's term of supervised release, however, is only granted if successful completion of the program should occur (K. White, personal communication, May 13, 2014). Other incentives continue to be explored with each fiscal year.

Many participants are cognizant that they are in need of help and are actively seeking resources and assistance to ameliorate their dependence from an addictive substance(s). Maintaining sobriety is what many former participants acknowledged as being their greatest achievement (observation, February 6, 2014). The re-entry court program urges its participants to pursue higher education, vocational opportunities, obtain steady and meaningful employment, as well as suitable housing (observation, February 6, 2014). Some participants are skeptical to receive help from the court staff and criminal justice system that has only caused them strife and hardship. However, many participants do accept the help that is offered and make positive life changes with the assistance of an empathic team of professionals (observation, February 6, 2014).

Eligibility Criteria

The re-entry court uses a multi-disciplinary approach to assist participants in becoming productive, law-abiding citizens, while reducing recidivism rates and improving overall community safety (K. White, personal communication, May 13, 2014). At the discretion of the judges and court staff, a prospective participant will typically not be accepted into the program if they are someone who has a pending case, a case that is up for revocation, or is excessively abusing drugs or alcohol (K. White, personal communication, May 13, 2014). The court team typically takes participants that are a moderate-high risk of recidivating in order to make a meaningful impact. Someone who is classified as a moderate to high risk may include but not be limited to sex offenders, individuals who committed crimes of violence and/or are a high-profile drug kingpin. Also, the re-entry court does not accept participants whose primary challenge involves mental health. This is due to the court not having enough resources or training to assist with this population (K. White, personal communication, May 13, 2014).

Furthermore, the prospective participant must be on supervised release and have a drug aftercare condition clearly outlined in their judgment of conviction order, also referred to as a J & C. A person's J & C is a written declaration of the court signed by the trial judge and entered into the record showing the conviction or acquittal of the defendant ("Code of Criminal Procedure," n.d.). In short, a person's J & C is a contract that they are bound to and follows them throughout their placements in the Federal Bureau of Prisons, half-way house, and period of community supervision.

To be eligible, the prospective participant must also have at least one-year remaining on their term of supervision and demonstrate to the court staff through a participant interview that they are a serious candidate. A prospective participant's substance abuse history can be further outlined in their Presentence Investigation Report (PSR), which is a bio-psycho-social assessment of that individual describing their personal, family and criminal history, discussing any past mental and physical health issues, and documenting any past employment, educational or vocational opportunities. Similar to a person's J & C, the PSR follows them as they navigate the criminal justice system (K. White, personal communication, May 13, 2014).

The C.H.A.N.C.E team has the discretion to choose which individuals they wish to bring into the program. Anyone who is a registered sex offender is forbidden to participate in the program. This policy is not meant to be discriminatory in nature, but ensures that the court has the discretion to decide what type of individuals can be released early.

Mitchell et al. (2012) argued "As a condition of program entry, drug court clients agree to abide by the court's demands, which typically include frequent urine testing, treatment attendance, and appearance before the court for status hearings" (Mitchell, Wilson, Eggers & MacKenzie, 2012, p. 61).

The referral process will typically come from other presiding Judges, U.S. Probation Officers, or Assistant U.S. Attorney's working for the U.S. District Court, Northern District of Illinois (observation, January 9, 2014). The court team will then decide whether or not they wish to have a private meeting with that individual to assess their motivation and gain better insight into their prospective goals. Prior to obtaining a private meeting with the court staff, it is highly

recommended that he or she observes a re-entry court session. This shows commitment and dedication to the judges and court staff before the individual even obtains a meeting (observation, January 9, 2014).

Orientation & Contracting Procedures

Next, if the court team approves to bring the individual on board, the Federal Defender's Office will proceed to provide the prospective participant with a formal contract binding that individual to the program requirements. Then, the individual will be inaugurated at the next re-entry court session and give a brief introduction to the rest of the participants in attendance by explaining their reason for joining the program and reporting any goals. This not only brings to light the similarity principle within the group context, but further demonstrates to the court staff and fellow participants their willingness to comply with all program requirements (observation, February 6, 2014).

Program Structure

Confidentiality and the anonymity of the group of re-entry court participants is an important component to the existing model. Likewise, participants and court staff must be mindful that other participants may know a co-defendant or be familiar with someone's background, which has the potential to stir up emotions that have the possibility to be harmful to other participants and staff. It should be noted that the program allows for heterogeneity and does not discriminate on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical disability (National Association of Social Workers, 2013).

Due to the amount of court staff involved, the time it takes to supervise this cohort, and the available funding, the program typically does not exceed 15-20 participants (observation, March 20, 2014). The capped number also allows for greater attention to be focused on each participant, which in turn increases graduation rates and further reduces recidivism. If a participant graduates, a ceremony will be held on their behalf to celebrate the marked achievement. Family members, other program participants and court staff are also encouraged to attend (K.

White, personal communication, May 13, 2014). An order will then be entered by the presiding judge to eliminate one-year from the participant's term of supervised release, in accordance with the contract previously disseminated and finalized by the attorneys from the Federal Defender Program (observation, March 20, 2014).

Court Environment

Once the court team has been briefed on each participant's progress, the judges will decide the best course of action and engage the participant with reassuring dialogue (observation, February 20, 2014). "Drug courts where the judge spent an average of three minutes or greater per participant during court hearings had 153% greater reductions in recidivism compared with programs where the judge spent less time" (Carey, Mackin, & Finigan, 2012, p. 24). By allowing the individual to speak to the court staff, it gives the system credence and encourages other program participants to be held accountable for their actions in front of their peers (observation, February 20, 2014). Similarly, it gives the individual a chance to speak his or her mind in a safe and welcoming environment. This approach is not only transparent, but also permits the judges to hear from the participants and allows for greater discretion in regards to non-adversarial decisions. The structure of each court session will be dictated by the staff and allow the judges to alter planned activities based on the progress made by each participant and their willingness to participate.

It should be noted that the courtroom layout is vastly different when the re-entry court is in session compared to the average hearing. Court staff and participants sit around a set of tables that have been set up in a circular fashion (observation, February 6, 2014). The judges seat themselves at eye level with the participants in order to create a more level playing field. While the judges still require the utmost respect, the arrangement puts the participants more at ease while interacting with the person holding power over their future because the judges are more approachable (observation, February 6, 2014).

Program Leadership

The C.H.A.N.C.E Program includes a co-facilitation process that is eclectic in nature and helps its participants navigate a difficult life transition. While the judges are there to assist in

the participant's respective recovery process, it should be noted that they are required to maintain control of the group, and have been known to be stringent at times in order to preserve the group's equilibrium (observation, March 20, 2014). Satel's (1984) study found the following:

Indeed, drug court is fertile ground for the unfolding of psychological drama. Perhaps, for example, the judge is a recovering alcoholic or has a loved one who is addicted to drugs. This could stir up inappropriately strong feelings of sympathy, impatience or even hostility toward a participant who happens to remind him of his or her former self [or his or her loved one] (p. 14).

The Satel study brings to light the challenges associated with transference and countertransference in a courtroom setting and should be considered in any future re-entry court program.

Worker's Self-Awareness/Program Deficiencies

Re-entry courts have proven to be beneficial to both participants and the community in regards to instilling positive change and from a cost-savings standpoint. Consequently, it is important to understand some of the potential deficiencies. According to the NASW Code of Ethics (2013), "The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty." (National Association of Social Workers, 2013). The social work profession also takes action to ensure that clients maintain a right to self-determination.

Critics of these courts, on the other hand, believe that such programs are paternalistic and negate an individual's ability to make decision for themselves (Quinn, 2007, p. 79). Quinn's (2007) research stipulates that judges and other court staff who have traditionally taken a more punitive approach in their work have started to see a shift in thinking. The caveat is that this recent change has not allowed for proper training to take place to educate the staff and bring them up to speed with all of the nuances involved in an individual who has experienced loss, grief, depression, and trauma on a vast scale from a very early age. Moreover, a participant's genetic predisposition to use illicit substances further

exacerbates personal issue(s), creating dichotomous challenges for those trying to assist (observation, May 1, 2014).

Suggestions for Re-Entry Court Programs

While there are some existing re-entry courts that incorporate a case manager or social worker into their program model, future programs should be contingent on a social worker taking part in court decisions. The addition of the social workers perspective on team affairs would allow the rest of the court staff to better understand the risk and protective factors evident in a participant's life, be able to better understand a participant's cognition and could orient the team to the nature of the person-in-environment perspective. This approach "is said to help the practitioner organize observations, planning, and intervention strategy" (Kondrat, 2011).

Furthermore, in order to give credence to the re-entry court programs of this country, a certain amount of funds should be made available to train staff in areas that will better assist participants in their endeavors and help them achieve long-term solutions to their challenges. Zweig (2011) argued, "52% of adult drug courts surveyed in 2004...could not accept eligible clients due to resource constraints" (as cited in Sevigny, Pollack, & Reuter, 2013, p. 194). Furthermore, according to the (NADCP, n.d.), it would take \$1.5 billion over six years to make drug courts available to every nonviolent, drug-addicted offender.

When considering environmental conditions, the re-entry court can make some participants feel uneasy, given that it could potentially be the same courtroom where they were previously sentenced. They could also be sitting across the table from an Assistant U.S. Attorney and/or judge that sentenced them. It is the court staff's responsibility to be cognizant of the environmental risk factors that influence the decision making processes of the participants and address those issues to the other staff and participants when warranted. Acknowledging any such issues and bringing them to the forefront early on in the process is in the best interest of both parties.

Program Evaluation

The team of seasoned professionals that work in the C.H.A.N.C.E. re-entry court

constantly evaluate the program's effectiveness through assessing the number of participants in the program at any given time, and considering whom they feel are adequate fits. Moreover, discussions involving potential termination from the program based on a participant's lack of motivation and adhering to program rules are also explored on a case-by-case basis (observation, January 9, 2014). While involuntary termination from the program is not the team's intended goal, it is necessary at times to uphold the validity and credibility of the program. Without such a measure in place, new and/or prospective participants would not take the program or court staff seriously, which has the potential to undermine the group's recovery process and reduce compliance with court orders (observation, January 9, 2014).

The C.H.A.N.C.E. Program evaluates participant progress on a bi-weekly basis (observation, January 9, 2014). While the two-week process does not delve into the intricacies of the program, it does allow for court staff to deliberate on potential program improvements and ways to better assist their participants. Down the line, it may be vital for the program to develop a needs assessment to address any gaps in coverage and bring to the forefront a cultural perspective to increase the efficacy of the program. "Drug courts where internal review of the data and program statistics led to modifications in program operations had 105% greater reductions in recidivism" (Marlowe, 2012).

Conclusion

This paper has demonstrated that re-entry and drug courts reduce recidivism rates, save taxpayer money and improve the cognition in individuals on supervised release. Supporting literature has also substantiated the need for additional re-entry and drug courts to be implemented nationwide with social workers being included on team decisions. Empirical research argues that both court model initiatives have a considerable cost savings and has favorable long-term outcomes compared to longer periods of incarceration. This writer has validated the effectiveness of re-entry and drug courts and disseminated information pertaining to the structure of the C.H.A.N.C.E. program in Chicago, Illinois.

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Let Me Not Cave In:

Empowering Survivors of Violence in Shelters

Elizabeth Scannell, JD

“A battered wife has a life smaller than the terror that destroys her over time... And when it happens again, she blames herself. She will be better, kinder, quieter, more of whatever he likes, less of whatever he dislikes. And when it happens again, and when it happens again, and when it happens again, she learns that she has nowhere to go, no one to turn to, no one who will believe her, no one who will help her, no one who will protect her.” – Andrea Dworkin¹ (Dworkin, 1993)

Introduction²

Domestic violence shelters comprise the underground railroad of the women’s movement and are the cornerstone of battered women’s programs. They most notably came into existence in the 1970s and were sustained by donations and volunteers—many of whom were survivors of violence themselves (Black, 2006, p. 204; Weiner, 1991, p. 189-190). Organized as feminist collectives, most crisis centers and companion shelters continue to be based in the empowerment model, whereby women are offered choices, and advocates serve to support these choices by providing peer counseling and referrals (Gengler, 2012, p. 503). However, as the movement gained stride and secured federal funding, agencies became increasingly bureaucratic and moved away from this feminist model and towards an “individualization of the problem” (Murray, 1988, p. 78). “Individualization of the problem” occurs when the cause or focus of an issue—such as an instance of violence—is attributed to an individual, rather than it being a social problem as well as the byproduct of greater social norms (Gengler, 2012, p. 503).

Survivors of domestic violence and their children are re-victimized by the system

every day, whether it be by police, courts, child protective services, welfare services, or all of these systemic players at once (Gengler, 2012, p. 503). Domestic violence advocates (“advocates”) play an important role in both supporting survivors and educating systems that interact with them, but the reality is that advocates and their agencies are not wholly separate from the “system” that re-victimizes survivors. This fact does not diminish advocates’ importance, but it raises an important inquiry into how services provided by crisis centers can best support and empower survivors in order to bring out individualized and systemic change.

This article aims to analyze the rift between ideology and practice in the services provided to families in domestic violence shelters, and how this rift undermines the greater movement to eradicate familial violence and bring about positive social change. Further, it examines the way macro-systems impact the efficacy of domestic violence services in shelters, and possible policy solutions to these problems.

Fleeing Violence and Barriers to Safety

It is estimated that one in four women will be a victim of domestic violence in her lifetime (National Institute of Justice, 2000).³ Women experience domestic violence regardless of race, but those in low-income homes (less than \$25,000 annually) are three times more likely to be battered than their upper-class counterparts with annual incomes of more than \$50,000 (Bureau of Justice Statistics Special Report, 1995; Bureau of Justice Statistics,

¹ Andrea Dworkin was a survivor of domestic violence, and after fleeing her abusive husband she went on to play an important role in the radical feminist movement (Fox, 2005).

² “Let me not cave in” is a line from a poem by a Bengali poet and writer, Rabindranath Tagore.

³ Women make up 85% of domestic violence victims, while men make up the remaining 15%. Because domestic violence largely impacts women, this article is concerned with violence against women. That is not to say that services for male survivors are not significant topics of concern, but because most domestic violence shelters are women-only the scope of this inquiry will be limited as such (Bureau of Justice Statistics Crime Data Brief, 2003).

2006).⁴ More than three women are murdered at the hand of an intimate partner every day, and it is estimated that 63% of youth convicted of homicide are incarcerated for the murder of their mother's abuser (Bureau of Justice Statistics Crime Data Brief, 2003, p.7).

While domestic violence⁵ does not discriminate, the sub-population that seeks shelter services is unique (Murray, 1988, p. 78). Specifically, this population consists of the most vulnerable and impoverished families impacted by domestic violence, as middle to upper class families are likely to have alternative options for housing (Murray, 1988, p. 78). Perhaps more importantly, these families have no one to turn to, no one who could temporarily take them in—which adds to isolation created by the battering cycle, and thus increases the likelihood that they will stay in the abusive environment (Murray, 1988, p. 78). It is also worth noting that 50% of residents in domestic violence shelters are children, and one or more children accompany almost 80% of women who enter these shelters (Saathoff & Stoffel, 1999, p. 99). Thus, the battered women's shelter movement is targeted at a population of exceptionally vulnerable women and children (Murray, 1988, p. 81).⁶ The shelter dilemma encompasses the desperate social need for shelters targeted specifically towards domestic violence intervention and how it clashes with both survivors' expectations and the services agencies are able to provide (Meth, 2001, p. 113).

⁴ Those with fewer resources are more likely to report domestic violence in the process of seeking help (Bureau of Justice Statistics, 2006).

⁵ Advocates and educators generally recognize that survivors of abuse are trapped in what is known as the cycle of violence. This cycle involves distinct phases whereby the abusive partner manipulates the survivor and minimizes the physical and emotional violence she has suffered. This cycle seeks to keep women caught up in the batterer's manipulations, and succeeds in causing women to blame themselves for the violence they suffer. Even when a survivor chooses to flee and seek shelter, the psychological trauma takes much longer to heal than any physical wounds (Kohn, 2008, p. 207; Domestic Violence Solutions).

⁶ Most women who enter shelters "have children, are unemployed, and are on welfare."

Women's Shelters and (Dis)Empowerment

The Importance of the Shelter Movement

Domestic violence shelters are essentially the only programs specifically tailored to domestic violence intervention (Haugen, 2012, p. 1040). When families enter shelter, they have a variety of agency resources available to them: a safe and secure temporary residence, counseling, case management, advocacy within the courts and social services, support groups, and access to legal counsel (Haugen, 2012, p. 1058). This article does not question the inherent value and importance of shelters, as first and foremost they offer women safety. As one survivor stated in her testimony before the House Subcommittee on Criminal Justice:

If there were no shelter, I wouldn't have left my home because there was nowhere else for me to go. Both of my parents are dead and I have no other family. My friends fear my husband... Without the shelter, I know that I would be dead now. My husband would have beaten me to death or would have shot me (Victims of Crime, 1987).

Further, it is estimated that utilization of shelter services reduces incidents of re-assault by 60-70% when compared to women who did not seek shelter (Roehl et al., 2005, p. 6; Domestic Violence Resource Center (b)). Re-assault is a subsequent incident of physical abuse, occurring 3-12 months after a survivor made contact with a crisis center, with severity ranging from hair pulling to strangulation (Roehl et al., 2005, p. 5). Shelter services do more to prevent subsequent incidents of domestic violence than any other individual service provided by crisis centers such as court advocacy or peer counseling (Roehl et al., 2005, p. 5). Of course, these services are available to all residents of a shelter along with the shelter program itself; it is one of the most effective methods of 'wrap-around' services for survivors and their children (Roehl et al., 2005, p. 5).

Screening protocols for shelter intake differ from agency to agency, but perhaps the most fundamental commonality for women in shelters is that they had nowhere else to go (Murray, 1988, p. 78). Though women who are

survivors of domestic violence face significant barriers to independence, shelters provide a safe space to begin to explore options and to regain their footing in a world turned upside down by violence (Weiner, 1991, pp. 187-88). Their circumstances are also the most severe, as the screening procedures seek to ensure that beds are given to families who are both in danger and have nowhere else to turn (Murray, 1988, p. 83). Thus, the shelter movement certainly provides 'shelter' in its most basic form to battered women and children—but the goals of the movement are greater than that. Domestic violence shelters seek to offer services unique to survivor's needs, outside of what a homeless shelter would offer, and originally their posture was in a greater movement to combat patriarchy and institutionalized oppression of women (Weiner, 1991, pp. 187-88).

The Conflict Between the Shelter Guidelines and Survivors' Needs

As noted above, domestic violence is indiscriminate, but socioeconomic status largely impacts an individual's capacity to respond to it (Meth, 2001, p. 113). Where a woman is economically dependent on her abuser and lacks any social outlet to turn to, she lacks a safety net to draw on when a violent incident occurs (National Coalition Against Domestic Violence).⁷ Thus, as noted above, the most vulnerable families seek shelter with domestic violence agencies (Murray, 1988, p. 78). Most shelters place a limit on the length of stay, with little room for extension (Haugen, 2012, p. 1058). Even shelters that do not designate a time limit require shelter residents to comply with individualized components of their shelter program, and all guests must comply with house rules (Gengler, 2012, p. 502). The unfortunate reality is that even where shelters allow an extended stay, there may be a two to three-year waiting list for subsidized housing (Haugen, 2012, p. 1037). Faced with homelessness, women often have no choice but to return to a violent home with their children (Haugen, 2012, 1037). Consequently, the chief concern of survivors entering shelter is finding stable

housing for themselves and their children as quickly as possible.

This goal often conflicts while the philosophical goals of the shelter program itself. Most shelters are based on the empowerment model, meaning that advocates offer "choices to women who have been denied freedom and agency within abusive relationships" (Gengler, 2012, p. 503). Choice, personal power, and taking responsibility for one's actions are at the root of this model; however, this model is much more difficult to uphold within the context of shelter work, versus advocacy that is done with survivors under other circumstances (Gengler, 2012, p. 503). When shelter residents fail to respect rules, advocates issue consequences in the framework of empowerment rhetoric (Gengler, 2012, p. 503). For example, in Gengler's (2012) observation of shelter culture, the staff enforced a point system, whereby a survivor who failed to meet a personal responsibility used a point (of which she had five until she was asked to leave) (p. 507). To shelter residents, points were something taken away versus something they used—it was reasonably seen as punishment instead of an exercise of choice (Gengler, 2012, p. 507). This dynamic, whereby shelter guests are essentially walking on eggshells to avoid breaking rules, is eerily similar to a survivors' experience during the tension building phase of the cycle of violence (Domestic Violence Solutions). Of course, shelters cannot be without rules, for the safety of all families and the staff. But as one resident stated after going into a cleaning frenzy, "I'm scared that I'll get written up. My husband will kill me. I'm trying to *stay*" (Gengler, 2012, p. 508).

Another crucial component to the empowerment model involves helping women to "recognize their place within the cycle of violence" and to recognize "their own power to end the cycle if they so choose" (Murray, 1988, p. 79). Besides requiring that residents comply with house rules, such as chores and weekly 'house meetings,' residents must also work with a peer counselor and attend support groups in order to realize this goal (Murray, 1988, p. 79). These components of the program aim to promote the fundamentals of the movement itself: educating women on the source of violence (patriarchy), commonalities between other women, and how to get it touch with their own power (Murray, 1988, p. 79). However, they also tend to create an environment where staff appear, by nature of the program dynamics, to

⁷ Abusers maintain their power over their victims by keeping them financially dependent on them. This can be achieved by withholding money, prohibiting her from obtaining employment, sabotaging existing employment by calling constantly during work hours, etc.

act as if they know a survivor's situation better than she does (Murray, 1988, p. 81).

These goals clash with a paramount objective for most survivors: a safe and stable place to live. (Murray, 1988, p. 79). From the moment women enter shelter, the clock is ticking towards the end of their stay. Shelter programs often require residents to attend support groups, individual peer counseling with an advocate, case management meetings, and group meetings with other families in the shelter (Gengler, 2012, p. 508; Murray, 1988, pp. 80-82). Failure to attend these required meetings and to fulfill other aspects of their program (signing up for TANF, filling out job applications, etc.) may lead to the family being asked to leave (Gengler, 2012, p. 508; Murray, 1988, pp. 80-82). A frustrating reality for survivors is that this assessment of progress is based on staff perceptions, which can lead to power imbalances and a loss of the egalitarian relationship between shelter advocates and residents (Murray, 1988, p. 80-82). Faced with expulsion, survivors are likely to do what they do best: survive. They often engage in covert forms of resistance to staff control, because outward rebellion would most likely lead to being asked to leave (Gengler, 2012, pp. 503-04).⁸ "Needing to find jobs, child care, and housing to reconstruct their lives, they often come to (Support) Group tired and overwhelmed, preferring to do laundry, get their kids to bed, or just relax for an hour" (Murray, 1988, p. 508). Ultimately, shelter programs create conflicting—and often impossible—expectations of survivors, and the result is passive participation, expulsion from the program, or—in the worst instances—an environment that may feel as coercive as the one the survivor and her children sought to escape (Olsen, 2012, p. 7; Gengler, 2012, p. 503-05).

Shelter Life and the Impact on Family Relationships

Another unique way that agency services conflict with survivor's perspectives and needs arises in the context of parenting. In Gengler's (2012) qualitative study of women in

⁸ Gengler (2012) writes that covert forms of resistance took place when survivors in shelter would utilize group sessions to tell stories or air grievances about policies, instead of participating in the planned curriculum. Outward rebellion, by contrast, could be a direct violation of rules such as refusing to follow a case plan or even drug use (pp. 509-513).

shelters, a counselor leading a parenting group asked the shelter residents, "Why is spanking an ineffective tool?" (p. 513). She was met with silence and then rephrased her question to ask "Why or why not?" (Gengler, 2012, p. 513). The residents all spoke up to argue that it *was* effective, highlighting racial and class disparities between the staff and residents (Gengler, 2012, p. 513). It is inevitable that families of different backgrounds and perspectives will seek shelter services, and thus shelter staff must be culturally competent in their programming.⁹ On the other hand, because of the anti-violence mission of shelters and because corporal punishment may be triggering for other residents and their children, most shelters prohibit corporal punishment (Olsen, 2012, p. 7). This is a very sensitive issue, as spanking in a legal sense does not constitute child abuse, but prohibiting it implies judgment towards a parent who would normally utilize it (Olsen, 2012, p. 7). One survivor in shelter said, "my children wanted to run over me because they knew they couldn't be spanked", and another stated "he is my child and I should be able to spank if I want" (Lyon, 2008, p. 87). Suggesting time-outs or alternatives to corporal punishment may be foreign to both the survivor and her child—or blatantly offensive—and can degrade the relationship between staff and the survivor as well as between the mother and child (Domestic Violence Resource Center (a)). Further, in terms of other mandatory programming incorporated into their stay, survivors "chafed at the implication that they lacked basic parenting, communication, or daily life skills" (Gengler, 2012, p. 508).

Within this topic, there continues to be difficulty with bridging services to children in shelters. Due to tight resources, shelters often are not equipped to deal with the needs of children that reside there with their mothers (Saathoff & Stoffel, 1999, p. 99). A survey in 1997 concluded that 72.4% of shelter programs provided services to children, but this was collapsed with services such as child-care and after-school care—thus not defining whether children were receiving quality advocacy around

⁹"Cultural competence is having an awareness of one's own cultural identity and views about difference, and the ability to learn and build on the varying cultural and community norms of students and their families. It is the ability to understand the within-group differences that make each student unique, while celebrating the between-group variations that make our country a tapestry" (National Education Associates).

the trauma they had experienced (Saathoff & Stoffel, 1999, p. 100). However, a later study in 2007 suggests that the services provided to children in shelter are improving, as ‘child counseling/advocacy’ was provided by 60% of the surveyed shelter programs (National Network to End Domestic Violence, 2008, p. 1). Unfortunately, shelters continue to report an inability to meet the needs of children in shelter due to the crisis intervention that is their primary task (National Network to End Domestic Violence, 2008, p. 8). One shelter reported, “Children are waiting four weeks or longer see a counselor due to limited availability of counseling services” (National Network to End Domestic Violence, 2008, p. 8).

Children in shelters have needs as important as their mothers. Shelter life can be extremely stressful for children, on top of their abrupt separation from existing support systems and the potential trauma of witnessing abuse (Saathoff & Stoffel, 1999, p. 100). Adult survivors struggle to meet the goals of the program and obtain housing (among other economic goals such as TANF, child support, etc.), and they also suffer from high levels of depression due to the trauma they have experienced, making it difficult at best to address their children’s needs (Saathoff & Stoffel, 1999, p. 100; Campbell, 1995, pp. 237-38). All of these factors impact children’s emotional, physical, and educational needs (Saathoff & Stoffel, 1999, pp. 100-02).¹⁰ None of these consequences are the fault of the survivor, or the shelter program itself—for it was the abusive partner who put them in this situation—but nonetheless there is clearly an important population whose needs are not being met by the shelter movement.

Macro- Oppression and the Violence Against Women Act

While there is much room for improvement within domestic violence agencies in their execution of shelter philosophies, responsibility also lays with macro-systems of power that impact an agency’s ability to fulfill its mission. Increased reliance on government funding is one of the most critiqued shifts in the battered women’s shelter movement, although ironically this shift largely led to the movement

¹⁰ Children living in shelters suffer from poor academic standing and high levels of truancy, as well as having significant emotional and physical/medical needs.

becoming more socially legitimate (Weiner, 1991, p. 226). Relying on government funding is a mixed bag—on one hand, it provides the financial resources that agencies and shelters desperately need to provide services to women who need them. On the other hand, it shifted the structure and feminist base of these organizations that sought to empower women and eradicate violence, transforming them into bureaucratic social services agencies that serve “clients” (Schneider, 2002, p. 183).

A landmark piece of legislation for survivors of violence, and the women’s movement in general, was the 1994 Violence Against Women Act (VAWA) (Haugen, 2012, pp. 1045-46; 42 U.S.C. §13701 *et seq.*). It came as a result of years of testimony around the large-scale degradation of women as human beings at the hands of their partners and the system itself (Haugen, 2012, p. 1046).¹¹ Section 13981 of the VAWA declared a civil right to be free of violence motivated by gender, whereby a person harmed by sexual or domestic violence had the ability to sue the person who harmed them to obtain compensation for mental and emotion damages, lost wages due to the trauma, and more (42 U.S.C. §13981(b)). This right was known as VAWA’s “civil remedy, but it was subsequently struck down as an unconstitutional extension of Congress’ commerce power in *U.S. v. Morrison* (42 U.S.C. §13981 (b); *U.S. v. Morrison*, 2000, 617). In *U.S. v. Morrison* (2000), two students at Virginia Tech allegedly raped a young woman, Christy Brzonkala (pp. 602-04). Virginia Tech failed to punish one of the perpetrators, and the other perpetrator’s suspension was struck down by the administration despite his admission that she had resisted (*U.S. v. Morrison*, 2000, pp. 602-04). A state grand jury would not indict the young men, and therefore Brzonkala sought recovery by way of VAWA’s civil remedy (*U.S. v. Morrison*, 2000, pp. 602-04). The Supreme Court invalidated this portion of VAWA, holding that Congress lacked the authority to provide for such a remedy, pursuant to the limits on Congressional power under the Commerce Clause (*U.S. v. Morrison*, 2000, p. 617). However, a survivor no longer has standing to sue one’s abuser in a civil suit, the philosophical

¹¹Haugen (2012) explains the survey of abuse inflicted on women by individuals and the system. In one highlighted incident, a judge in Georgia mocked a survivor during a hearing, and laughed as she left the courtroom. Her abuser murdered her soon after this hearing (p. 1046).

right to live free from violence remains the heart of the law. Further, VAWA brought about slow, yet deliberate, systemic change in the way courts, politicians, and law enforcement treated domestic violence (Haugen, 2012, pp. 1046, 1049). It “has allowed domestic violence to move out of the shadows of secrecy into the forefront of the media” (Haugen, 2012, p. 1049).

VAWA continues to face significant pushback on state and federal levels, with the federal Congress most notably refusing to support it without significant compromise each year it is presented for reauthorization (Marcotte, 2013). Recently, opponents attempted to exclude targeted services for LGBT, immigrant, and Native American communities impacted by domestic violence (Espinosa, 2012). More importantly for the purposes of this article, the 2005 and 2011 reauthorization drastically cut funding for emergency and transitional housing (National Coalition Against Domestic Violence, 2006, p. 5). In 2005, the \$175 million budget for shelter services was cut altogether, and in 2011 only \$10 million was delegated to “develop options for adult and youth victims of domestic violence” (National Coalition Against Domestic Violence, 2006, p. 5). Since these cuts, shelters can now apply for limited and specific grants through VAWA, but these grants are much more restrictive and the waiting process is lengthy (Haugen, 2012, p. 1067).¹²

Additional federal funding sources include the Victims of Crime Act (VOCA), the Family Prevention and Services Act of 1984, and various grants through the Department of Health and Human Services and Department of Housing and Urban Development (Weiner, 1991, pp. 207-210). Unfortunately, most of these grants require strict limitations and offer little funding, and at this time, VAWA is the main source of funding for shelter programs and allows for the most flexibility (Haugen, 2012, pp. 1063-64, Correia & Meblin, 2005, pp. 14-16). State and local grants pose the same problems, as some impose standards such as regulation of shelter operation, power in appointment of board members, or the requirement of efforts to reunify the family with

the abuser—which may be contrary to the survivor’s wishes and needs (Weiner, 1991, pp. 221-22).¹³ These standards hold agencies hostage. They must choose between sacrificing their autonomy and allowing survivors’ needs to go unmet. Some argue that “reliance on government funding thwarts the movement from radically changing the system” that oppresses women (Weiner, 1991, pp. 226). The reality seems to be that such funding is necessary to meet the needs of this vulnerable population, but it is also important to consider the way in which this reliance impacts the efficacy of the services provided.

Domestic violence is the leading cause of homelessness in the U.S., and without access to shelter services the inevitable result is both increased levels of homeless women and children and more women choosing to return to their abusers (National Law Center on Homelessness, 2005, p. 1; Haugen, 2012, pp. 1041-42). But is it a choice when the only alternative is taking to the streets with your children? Many have recognized that shelter and housing is one of the greatest obstacles faced by domestic violence survivors (Haugen, 2012, pp. 1064-65). The precarious and politicized nature of government funding threatens both the availability of shelter and the capacity for domestic violence agencies to provide crucial education to survivors and other organizations on the roots of gendered violence and empowerment (Haugen, 2012, pp. 1042).

Going Forward

The importance of women’s shelters cannot be overstated. In theory, they provide empowering wrap-around services to families that have been impacted by violence such that they were forced to uproot themselves completely from their lives. The disparity between policy, based on empowerment and feminist theory, as compared to actual practice and the way it is experienced by survivors is not unique to the women’s movement, and there are multiple possible solutions to the problems presented by this article.

¹² VAWA was reauthorized in 2013 after much debate, and the 2014 appropriations modestly increased the general grant to which programs may apply and allocate to shelter programs (National Network to End Domestic Violence, 2014). However, again, no funding was directly allocated to shelter services (Campaign for Funding to End Domestic and Sexual Violence, 2014).

¹³ Weiner (1991) highlights standards imposed by Texas and a national survey of state control of shelter standards (pp. 221-22).

Returning to Feminist Philosophies with an Emphasis on Trauma- Informed Advocacy

The most basic solution for domestic violence agencies is to return to the feminist principles that informed the battered women's shelter movement's creation in the 70's. At the movement's inception, advocates "saw their role as more than service-providers—they believed they could change society" (Weiner, 1991, p. 227). As the movement achieved legitimacy and funding, more advocates entered the field that did not identify as feminists (Weiner, 1991, p. 228). This reality will continue to be true, but it does not follow that the core of these agencies must shift with the identities of the staff.¹⁴ Where the approach to women in shelter shifts to a social service agenda, the basis of empowerment is lost and power battles between staff and survivors ignite (Weiner, 1991, p. 229).¹⁵

There must be a balance between the professional assessment of a survivor's needs and the understanding of her experience within greater systems of power (Rodriguez, 1988, pp. 220-21). Where feminist ideals do not inform an assessment of a survivor's experience, advocates run the risk of prioritizing compliance with house rules over placing a survivor's progress within her own internalized oppression as a result of the trauma she suffered (Domestic Violence Resource Center (a)). In addition, a feminist-informed perspective would alleviate the social distance between advocates—who are often privileged—and the women in shelters, based on the idea that "in a fundamental sense we are all battered women, the experience of one matches the experiences of all" (Weiner, 1991, p. 236). Feminism—from a multicultural, class-conscious, and critical race perspective—fosters a sense of sisterhood, recognizing that all women are victim/survivors in their own way due to the

position of all women within a patriarchal society (Weiner, 1991, pp. 239-41). Employing feminist theory in practice with battered women prevents inherent power imbalances and resulting prejudices such as xenophobia and homophobia (Weiner, 1991, pp. 239-41).¹⁶ As previously noted, the move towards individualizing the problem, rather than identifying domestic violence as a greater social problem that results from existing norms, has created a "one size fits all" approach to women with drastically different circumstances (Murray, 1988, p. 78).

Re-adopting this perspective in practice would improve shelter culture and the relationships between staff and residents. Many shelters have moved from a 'rules' perspective to "guidelines" or "rights and responsibilities" (Curan, 2012). Linda Olsen of Seattle's Domestic Violence and Sexual Assault Prevention Division (2012) writes:

The good about... rules is the desire from the shelter community to be a safe, supportive environment for each woman and child. The bad about the rules is when they are too rigid to allow for unique circumstances or when there are too many to be realistically enforced (or remembered). The ugly... is when shelter advocates are no longer able to be advocates and become the rule police. The ugliest is when the survivor, seeking to escape an abusive, oppressive environment, finds herself in an equally oppressive environment in the shelter (p. 2).

With this commentary informing the need to shift the way we provide services to families in shelters, shelter programs can begin to reshape existing rules to ensure that the environment is safe and supportive—rather than antagonistic (Rodriguez, 1988, pp. 223-24). "Sometimes staff efforts to be protective may be perceived as a need for control... [and] battered women may respond by concealing information" (Olsen, 2012, p. 5). For example, where a shelter's location is confidential, is it right to ask a resident to leave when her child tells a bus driver where he lives? Probably not, but what if he tells his father? Dealing with these 'breaches' on a

¹⁴ Weiner (1991) provides a more radical critique of the shift in the movement. She elaborates on significant changes in rhetoric, from "women battering" to "domestic violence," and how agencies were made to change their names from "Women's Aid" to "Randolph County Community Crisis Center." She bases her argument on the theme that fundamentally, in relying on government funding, the movement came to rely on the patriarchy it aimed to subvert.

¹⁵ Weiner (1991) notes that the shift "changed the character of the shelters" (p. 229).

¹⁶ Weiner (1991) elaborates on how external privilege distances advocates from guests, and how homophobia almost naturally resorted from the loss of feminism in the movement (pp. 239-41).

case-by-case basis is crucial, and where safety is threatened then “everyone involved, especially the child, needs to understand that leaving the shelter is not a punishment but a safety measure” (Olsen, 2012, p. 6). Regulation of parenting, such as in the context of corporal punishment, must be done in a sensitive way with explanation of the communal reasons behind it (Olsen, 2012, pp. 6-7). Olsen (2012) elaborates:

In addition to telling women what they can't do as parents while in our programs, we need to give thought to how we can support women's parenting. Battered women's parenting has often been undermined, compromised or distorted by the abuser; for this reason, we need to work from an empowering place of helping women reclaim their parenting (p. 7).

Limiting the amount of rules, and opting to rethink the physical space rather than additional regulations, reinforces the empowerment model and a cooperative environment that shelters are supposed to be based on (Adams & Bennett, 2012, pp. 3-4; Curan). For example, if something is stolen from a resident, then instead of drafting additional rules the shelter could allocate funds for safe boxes in each resident's room (Olsen, 2012, p. 5). By encouraging residents to resolve their own conflicts, and allowing them to distribute chores amongst themselves, rather than by staff direction, it allows for advocates to avoid “policing.” (Rodriguez, 1988, p. 218).

Funding for Shelter Resources

From a larger standpoint, the shelter movement is undeniably dependent on the action and support of government funding sources. Critiques of this dependence are important to consider and explore in order for advocates to maintain independent perspectives and ensure that fundamental philosophies are not being sacrificed. VAWA continues to fail to remedy the desperate need for quality domestic violence shelter programs and transitional housing for survivors and their families (Haugen, 2012, p. 1057; National Network to End Domestic Violence, 2014; Campaign for Funding to End Domestic Sexual Violence, 2014). Additional funding for shelter programs would decrease the need to limit length of stays so severely (30 days or less in most instances) and would allow for more flexibility in screening (Williams, 1998, p.

143). Moreover, survivors would have more options to enter shelters in a location best fitting their needs, rather than having no choice but to relocate 200 miles away to a rural area with no resources to meet their needs.¹⁷ Women who are turned away from domestic violence shelters due to overcrowding often must turn to homeless shelters, but even in these instances they do not meet the definition of “homeless” (Haugen, 2012, p. 1059).¹⁸ Homeless shelters are not confidential and secure the way domestic violence shelters are, and they do not offer a program tailored to the experience of survivors of violence (Haugen, 2012, pp. 1041, 1058).

The government should consider this complex relationship between domestic violence and homelessness, and delegate specific funds to battered women's shelters. Shelters are not hotels, but increased availability would alleviate the problem of limited stay lengths—which often result in women entering a homeless shelter or returning to abusive situations—and would allow the movement to assist more women who are in need of emergency shelter (Haugen, 2012, p. 1037). In addition, the quality of services would improve with these changes, particularly with regard to the lack of children's services in shelters (Saatoff & Stoffel, 1999). Millions of dollars are being funneled into VAWA in order to combat violence on a variety of levels, but completely cutting funding for shelter and transitional housing services degrades any good being done (Haugen, 2012, p. 1068). Eighty-nine percent of all requests received by crisis centers concern emergency shelter (National Network to End Domestic Violence, 2011, p. 11). Eighty-two percent of programs saw an increase in demand for these services from 2009 to 2010, while there was a seventy-seven percent decrease in funding for these services during this time period (National Network to End Domestic Violence, 2011, p. 4). These statistics are staggering when considered alongside Congress' refusal to reauthorize the budget for shelter services, and they represent an unacceptable failure to protect abused women and children.

Each funded provision of VAWA is crucial to the movement, but it is clear that

¹⁷This is especially true for immigrant or refugee families with language barriers, as rural areas are unlikely to be able to meet their cultural needs to bridge the language gap effectively.

¹⁸Because battered women have access to a home, albeit an unsafe one, they are often turned away from homeless shelters.

emergency shelter services, as well as housing programs, are a crucial component that is not receiving adequate support. Haugen (2012) suggests that VAWA could shift existing budgets for awareness campaigns on college campuses and instead facilitate partnerships between universities and student groups, and delegate some of these funds to shelter programs (pp. 1069-70; 42 U.S.C. §14045(b)(a)(2)).¹⁹ Hers is a valid proposal made in light of the harsh economic and political realities, as the violence faced by women on college campuses is certainly an issue of serious importance. On the other hand, funding could be shifted within the existing budget such that housing grants could be moved into direct funding for shelter services (Campaign for Funding to End Domestic and Sexual Violence, 2014). This shift would alleviate the burden of grant writing, and the limitations that come with such grants, and would also guarantee funding for these services for all agencies. Exploring alternative sources of funding is a nebulous but important task facing the battered women's shelter movement. Along with tasking the government with changing the way it allocates resources, there is something to be said for reliance on community resources and self-sufficiency. A multi-leveled response is bound to be the most effective response.

Economic Empowerment Programs

Currently, the majority of shelter programs are powerless to substantively provide a solution to the lack of housing for survivors (Murray, 1988, p. 82). Consequently, implementing economic empowerment programs is an important way to bridge the goals of survivors and domestic violence agencies. Most existing economic empowerment programs stress financial literacy, whereby trained advocates assist survivors in obtaining the necessary skills to "make sound financial decisions and obtain resources" (Postmus, 2012). Some agencies are even able to support transitional housing programs in connection with financial literacy programs, allowing families to stay in these transitional homes for six months to two years (Correia & Meblin, 2005). However, while transitional housing programs should be funded alongside shelter services, economic empowerment programs should not be based on

temporary goals. Instead, within this proposal, they should work to subsidize a survivor's goals towards economic independence. For example, while subsidizing rent for an apartment, a survivor could continue to receive peer counseling and have access to all of the services provided by the agency, including counseling for her children. This methodology would link a survivor's economic goals with services, and would facilitate her healing process.

Agencies have seen success with both micro-loans and subsidized grants contingent on the survivor's continued involvement with counseling—that way her economic independence is coupled with empowerment (Correia & Meblin, 2005). For example, in Kentucky a domestic violence agency issued micro-loans to survivors, allowing them to pay off debt or fund a security deposit—while at the same time improving their credit score (Switzer, 2010). The Allstate Foundation Domestic Violence Program most notably provides funding for these sorts of programs (The Allstate Foundation).

These programs offer grants to qualified survivors to achieve such goals as obtaining housing, going back to school, and purchasing cars, amongst others (Sanctuary for Families; California Partnership to End Domestic Violence). Most of these programs are new, and the results are in progress, but their value is immeasurable when considered alongside the connection between homelessness and families who utilize emergency shelters. Programs primarily focused on financial literacy, without the proposed funding grant, saw seventy-one percent of participants pay off existing debt and eighty-eight percent set clear financial goals (Postmus, 2012, p. 7).

The limited but growing research on the prevalence of financial abuse and its impact suggests that it is critical for advocacy programs to incorporate economic empowerment as a part of their core services. What's more, the results of early studies suggest that financial literacy and economic empowerment programs are indeed effective in assisting survivors to improve their financial knowledge, increase their confidence about managing their financial affairs, and enhance financial behaviors that will improve their financial safety and security (Postmus, 2012, p. 7).

¹⁹ Congress delegated \$500,000 per university, totaling \$12 million per year, for combatting sexual assault and intimate partner violence on campus.

Further, connecting these programs to shelter residents would alleviate conflicts between survivor's economic needs (particularly housing) and the empowerment goals of the shelter program. By designating separate advocates to work with survivors on particular goals, there is less likely to be a conflict of interest between the survivor and her advocate that opens the door to animosity. Where the same advocate is providing peer counseling and enforcing shelter rules, the counseling is less likely to be successful due to the enormously different roles the advocate has to play. Thus, where economic empowerment programs employ certain advocates to work around financial literacy and housing, and others to focus on emotional healing from trauma, the goals of the movement and population will be more smoothly met.

Domestic violence costs the nation more than \$5.8 billion per year, with nearly \$4.1 billion of that amount going to medical and mental health services (Department of Health and Human Services, 2003, p. 2). With evidence emerging that economic abuse is paramount to keeping families trapped in a cycle of violence, and that financial empowerment can free women and their children from this cycle, then it makes social and financial sense to funnel money into these programs. A richer dialogue around this proposal on a communal and national scale is crucial to supporting women and children in shelters in order to prevent ongoing homelessness and the terrible circumstance where a shelter exit date is approaching and a family has nowhere to go.

Conclusion

VAWA has increased awareness of domestic violence more than any other piece of

legislation, and its impact on societal perceptions of familial violence has been invaluable (Haugen, 2012, pp. 1046-1049). However, government funding has failed to provide necessary resources for direct intervention and long-term housing solutions for survivors and their families. The lack of resources has stripped advocates of their power to offer referrals and diminished every shelter's capacity to provide more than a temporary stay. The ruthless economic landscape severely frustrates the long-term goals of the empowerment model, as staff expectations conflict with the reality survivors face. "It is unacceptable that even one victim is turned away from a shelter in their time of crisis simply due to a lack of financial resources," but our failure does not end there (Haugen, 2012, p. 1068). Evidence demonstrates that even women who are given beds are not having their needs met, both due to a disparity between staff expectation and survivor reality, and because resource deficiencies prevent survivors from reaching their goals.

Kevin Bales (2011) talks about what he calls the "Freedom Dividend"—within the context of human trafficking—whereby liberated victims conclusively reinvigorate and give back to their communities. This concept is equally appropriate in the context of domestic violence. Funding these initiatives is not a charity exercise, as women and children liberated from oppression serve the greater community and begin to benefit the world around them. Multi-level activism for families in shelter programs will serve to make this goal a reality, and with it we may begin to realize the initial goal of the movement to free women from systemic oppression and to recognize the right of families to live free from violence.

Elizabeth Scannell is a recent J.D. graduate from Loyola University Chicago and an alumni of the Loyola ChildLaw Fellowship program. After earning her BA in sociology and philosophy at Indiana University Bloomington, Elizabeth served as an advocate for survivors of domestic violence with the Americorps Victim Assistance Program. During law school she continued her work in the field of domestic violence at the Legal Assistance Foundation, and tracked the re authorization of the Violence Against Women Act with the Office of the Lieutenant Governor of Illinois, Sheila Simon.

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Pregnant Women Suffering From Substance Use Disorders (SUDs):

Societal Response and the Resulting Ramifications

Olivia Lewandowski, MSW, CADC

Abstract

The purpose of this essay is to examine the ways in which societal responses to pregnant women suffering from substance use disorders (SUDs) has lead to their unjust criminalization and a number of significant ramifications for this unique population. Society's current approach to this issue is the utilization of criminal charges to prosecute these women. Opposing stances advocate for the decriminalization of pregnant women who suffer from SUDs, as this punitive approach results in the violation of their constitutional rights as well as other negative social consequences. The author takes the position of decriminalization. In addition to discussing the ways in which these women's constitutional rights are violated, the author puts forth a discussion of how the criminalization of pregnant women afflicted by SUDs reinforces the negative stigma associated with this mental disorder and significantly contributes to the severity of the issue rather than remediating it by creating barriers to their access to SUD treatment as well as other healthcare services.

Keywords: substance use disorders, pregnant women

Introduction

Substance use disorders (SUDs) are recognized as a mental illness in the DSM-5 in which the individual affected suffers a variety of cognitive symptoms such as cognitive impairment, loss of control over substance use and risky substance use, as well as physiological symptoms including alterations in brain circuitry and chemistry which in some cases remain post-detoxification from the substance (American Psychiatric Association, 2013). These cognitive and physiological symptoms may manifest as behavioral symptoms including intense cravings for substance use, continued use despite significant consequences, recurrence of use as well as other impairments in social functioning, all of which have the potential to benefit from

treatment (American Psychiatric Association, 2013). Although SUDs are prevalent among all populations, it is worth recognizing their differential impact on specific populations. For example, rather than being viewed as individuals suffering from a mental illness with the potential to benefit from treatment, pregnant women suffering from SUDs are criminalized for exhibiting symptoms of their disease, one of those symptoms being ongoing substance use (Reitman, 2002).

The criminalization of pregnant women suffering from SUDs occurs via the application of criminal charges that were not intended to address cases of prenatal substance use (Reitman, 2002). These criminal charges are then utilized to prosecute these women, thus creating a differential impact on them in comparison to their non-pregnant counterparts in terms of legal and social ramifications (Reitman, 2002, p. 284). Currently there are no laws in existence at the state or federal level that specifically address the issue of prenatal substance use which act to protect pregnant women suffering from SUDs from unjust prosecution and criminalization (Paltrow & Flavin, 2013). As such, the faulty application of criminal charges and the prosecution of pregnant women suffering from SUDs seems to be a foundationless solution to what is recognized as a highly controversial social issue (Reitman, 2002).

In the following essay, the author will examine society's current response to the issue of pregnant women suffering from SUDs in the form of unjust criminalization and faulty application of the law, as well as a number of the resulting ramifications including the promotion of negative stigmas and the creation of barriers to these women seeking treatment.

Magnitude of the Problem

Substance use among pregnant women is a legitimate public health concern, affecting an estimated 375,000 newborn babies each year (Reitman, 2002, p. 267). Studies have documented that in the United States, "almost

4% of women use illicit drugs during pregnancy (Merritt, Jackson, Bunn, & Joyner, 2011).” Results compiled from the National Survey on Drug Use and Health (2011) present with similar findings (Narkowicz et al., 2013).

In addition to high prevalence rates, there are known to be a number of health risks associated with substance use during pregnancy for both mother and baby. Some examples of these potential health risks include miscarriages, premature birth, low fetal birth weight and stillbirth, as well as diseases affecting the respiratory, nervous and cardiovascular systems of the body (Narkowicz et al., 2013, p. 141). Aside from these social costs, studies have found that monetary costs to the United States associated with the necessary medical care provided to these infants amounts to as much as \$37.5 million each year (Reitman, 2002).

Scholars have cited prenatal substance use as a significant social health issue in need of immediate attention due to the severity of both its social and monetary costs to the United States (Narkowicz et al., 2013). In the interest of promoting an overall better functioning and healthier society, remediation of this issue is critical. However, it is also important to consider the potential negative consequences associated with society’s methods of criminalization aimed to resolve issues related to prenatal substance use.

Opposing Stances: Criminalization v. Decriminalization

Society’s current legal approach to the issue of pregnant women suffering from SUDs creates a differential impact of the disorder on pregnant women in comparison to their non-pregnant counterparts. This differential impact is most strongly pronounced in the criminal justice system where these women are blatantly oppressed and according to Reitman (2002), denied of their constitutional rights to equal protection under the law, privacy and personal autonomy. In direct opposition to this approach is the demand for equality and equal protection under the law (Reitman, 2002), emphasizing the need for a system that offers support and treatment to these women rather than prosecution.

Criminalization

Legal action is taken as a punitive measure to criminalize pregnant women suffering from SUDs (Reitman, 2002). This is carried out by applying flawed interpretations of the law to situations in which women suffering from SUDs engage in the use of substances while pregnant, a symptoms of their disorder, and is justified by a misrepresentation of fetal rights under current state law (Reitman, 2002).

Faulty Application of the Law

Despite major controversy, state legislatures utilize criminal sanctions as a punitive approach to address the issue of pregnant women suffering from SUDs (Reitman, 2002). Charges brought against these women commonly include distribution of drugs to a minor, child abuse and neglect, assault with a deadly weapon, as well as reckless injury and homicide (Reitman, 2002). Additional examples of criminal charges that may be used to prosecute these women include willful child endangerment and first-degree murder (Paltrow & Flavin, 2013).

In the United States, Jennifer Johnson was the first woman to be criminally convicted under charges such as these in *Johnson v. State* (Johnson v. State, 1992; Reitman, 2002, p. 297). In this case, Johnson was charged with delivery of a controlled substance to a minor after her baby was born, but before the umbilical cord was cut (Johnson v. State, 1992, p. 1291; Reitman, 2002, p. 297). Although Johnson was initially convicted under these criminal charges, the ruling of her case was later reversed due to the application of these charges being inconsistent with their legislative intent (Johnson v. State, 1992, p. 1296; Reitman, 2002, p. 297). To date, no state legislature has revised laws pertaining to child abuse, child neglect, or drug delivery and distribution to be applicable to a woman’s substance use during pregnancy and the impact that her use may or may not have on the fetus (Paltrow & Flavin, 2013). As such, while there have been a myriad of court cases documented in which criminal charges such as those described above have been used to prosecute pregnant women suffering from SUDs, it is important to note that the majority of them are overturned due to their faulty applications of law (Paltrow & Flavin, 2013), as was in the case of *Johnson v. State*.

Considering that the majority of these cases are overturned, one may question the extent to which it is accurate to say that these women are criminalized by society's current response to prenatal substance use and the degree to which this negatively impacts both mother and baby. However, the application of criminal sanctions and subsequent attempts to prosecute pregnant women suffering from SUDs is indicative of current societal views that these women deserve to be punished and treated as criminals. Scholar Eckenwiler (2004) refers to this trend as the "retributive theory of justice." When applied to prenatal substance use, this theory maintains that when it comes to pregnant women suffering from SUDs, current trends of criminalization reinforce societal views that these women deserve to be punished with severe criminal sanctions as opposed to being treated with compassion and empathy (Eckenwiler, 2004), thereby creating a system in which pregnant women suffering from SUDs are in fact criminalized and suffer a variety of both legal and social ramifications.

Practices of prosecuting pregnant women suffering from SUDs are especially problematic when one considers that fear of legal consequences, loss of parental rights and negative social stigma have been documented as significant barriers to women seeking necessary treatment services that would otherwise promote the overall health and well-being of both mother and baby (Jackson & Shannon, 2012). Despite their inability to convict women on these charges, high rates of overturned cases and the significant barriers to women seeking treatment created by this punitive approach (Paltrow & Flavin, 2013), society's response of criminalizing pregnant women suffering from SUDs continues and is justified by the misinterpretation of fetal rights under current state laws (Reitman, 2002).

Fetal Rights

Beliefs of life beginning at conception or life beginning at birth remain a largely debated topic (Reitman, 2002). To date there is no consensus, socially, legally or otherwise, as to when life begins (Reitman, 2002). In addition, the Supreme Court has never officially determined when a fetus becomes a human life under constitutional law (Reitman, 2002). Furthermore, there are no laws under any state legislatures that hold a woman responsible for the outcome of her pregnancy, or make it illegal

for her to carry her baby to term regardless of whether or not she is suffering from a SUD (Paltrow & Flavin, 2013).

Despite the lack of such laws or consensus regarding fetal rights and the beginning of human life, criminal charges continue to be brought against pregnant women suffering from SUDs and are justified by the State's argument for the interest in the protection of a "potential" human life (Reitman, 2002). However, such an argument would require there to be a consensus as to when a fetus is considered to be a human life in need of protection. Without legal recognition of a fetus as a human life, a state cannot justify the use of criminal sanctions to prosecute women who use substances during their pregnancy regardless of their interest or intent (Reitman, 2002).

Decriminalization

In direct opposition to the criminalization of pregnant women suffering from SUDs are those who demand equality and equal protection under the law. Those in favor of decriminalization find support for their stance in the rights that are provided to American citizens under constitutional law including the rights to equal protection under the law, privacy and personal autonomy (Reitman, 2002). Those who argue for decriminalization further support their stance by highlighting the potential harm that can be done if we continue to utilize a punitive approach to address the issue of pregnant women suffering from SUDs.

Equal Protection

When discussing the utilization of criminal sanctions to address the issue of prenatal substance use, there are a number of constitutional issues that arise. To begin, under constitutional law both men and women are guaranteed the right to equal protection under law regardless of their biological characteristics (Reitman, 2002). The allowance for the prosecution and conviction of pregnant women suffering from SUDs allows for the creation of laws designed to criminalize only women and only while they are pregnant (Reitman, 2002). Such laws are not applicable to men, and thereby violate a woman's right to equal protection under the law (Reitman, 2002).

Privacy and Personal Autonomy

In addition to violating a woman's right to equal protection under the law, the criminalization of pregnant women suffering from SUDs also violates a woman's right to privacy and personal autonomy (Reitman, 2002). As provided by the Constitution, the citizens of the United States of America, both men and women, are guaranteed the right to privacy and personal autonomy (Reitman, 2002). To begin, there is the question of whether or not prosecuting women for using substances while pregnant violates her right to privacy, as well as her right to personal autonomy over the fetus' (Reitman, 2002).

In the Supreme Court case *Roe v. Wade*, the Court ruled that criminalizing a woman's right to terminate a pregnancy violates her right to privacy and autonomy, as it is her right to make decisions in regards to what she does with her personal body (*Roe v. Wade*, 1973; Reitman, 2002). With the Supreme Court's ruling in favor of a woman's right to privacy and personal autonomy in *Roe v. Wade* (Reitman, 2002) and the lack of legislation making a woman responsible for the outcome of her pregnancy (Paltrow & Flavin, 2013), it would seem appropriate that these rights extend to a woman's actions during pregnancy, including the use of substances if she is suffering from a SUD, and thereby making it unconstitutional to criminally charge a pregnant woman who is suffering from a SUD.

Criminalization & Resulting Ramifications

Current trends of utilizing criminal sanctions in order to punish these women results in a number of unintended ramifications by creating a negative stigma associated with SUDs and the pregnant women affected by them (Beckett, 1995). Society's response of criminalization also results in the instillation of fear within these women, which serves as a significant deterrent from seeking SUD treatment and other healthcare services (Beckett, 1995). This in turn exacerbates the issues in questions rather than promoting healthy moms and healthy babies.

Negative Stigma

The current trend of criminalization promotes negative stigmas including the idea that such individuals are "bad" mothers or immoral women deserving punishment (Beckett, 1995). Incidences in which such negative labels are ascribed to these women are found in statements made by legal officials presiding over these cases involving pregnant women suffering from SUDs (Eckenwiler, 2004). Such was the case when a South Carolina state prosecutor referred to one mother being charged for prenatal substance use as "callous (Eckenwiler, 2004)," suggesting that she was uncaring towards the well-being of her child. Promoting such stigma leads to the unequal treatment of these women and creates significant barriers to their ability to access necessary services that would otherwise promote the health of both them and their baby (Eckenwiler, 2004). In support of this notion are findings from studies that show the stigma associated with receiving SUD treatment while pregnant to be among the most significant barriers to these women seeking necessary treatment services (Jackson & Shannon, 2012).

By criminalizing these women for their substance use, we are punishing them for exhibiting behavioral symptoms of the disease they suffer from and deterring them from seeking treatment as well as other healthcare services (Beckett, 1995). Rather than characterizing these women as immoral individuals who deserve punishment, we must remain cognizant of the fact that these women are displaying behavioral symptoms of their SUD, a disease which we know to benefit from treatment, so that we may remain compassionate and advocate for policies that provide them with the treatment and support necessary for recovery (Jackson & Shannon, 2012).

Barriers to Treatment

Although research has shown that pregnant women suffering from SUDs benefit tremendously from treatment, there are still a number of barriers to them actually accessing and taking advantage of these necessary services (Jackson & Shannon, 2012). Aside from negative stigma that is pervasive throughout our society (Beckett, 1995), the criminalization of pregnant women whom suffer from SUDs also results in significant barriers to seeking SUD treatment and prenatal care (Roberts & Pies, 2011). Studies

have been consistent in their findings that pregnant women suffering from these disorders are more likely to receive little or no prenatal care and treatment due to fears of having their SUD identified by their health care providers and potential legal repercussions (Roberts & Pies, 2011). Even when these women do seek healthcare services, professional associations and organizations including the American Medical Association, the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists are in agreement that women suffering from SUDs are less likely to speak freely and honestly with their healthcare providers regarding their substance use and treatment needs due to fear of criminal charges, arrest, and/or prosecution (Paltrow & Flavin, 2013). Although substance use may have a significant impact on the health of the developing fetus, it has also been found that lack of prenatal care may carry equally negative health risks for the fetus (Roberts & Pies, 2011). As such, it is imperative that we remove these barriers so that we may encourage pregnant women to utilize the healthcare and SUD treatment services that will promote the overall well being of both them and their baby.

Additional Considerations

Interestingly, studies have also proven that the effects of substance use on the fetus may not be as detrimental as was once thought (Ondersma, Winhusen, & Lewis, 2010). Such studies have shown that even though substance use during pregnancy has been associated with negative outcomes for the fetus, these effects are not present in every case (Ondersma, Winhusen, & Lewis, 2010). Moreover, when these negative health outcomes do exist, their effects are not nearly as devastating as suggested by current societal viewpoints and have the ability to be moderated with treatment (Ondersma, Winhusen, & Lewis, 2010). Drawing from these findings, it is critical that we move towards the decriminalization of pregnant women suffering from SUDs in the interest of removing these barriers that limit their access to SUD treatment as well as other healthcare services that will lead to better health outcomes overall.

Semantics

In addition to maintaining an awareness that these women are suffering from a treatable

mental disorder rather than willfully putting their children in danger, the author feels that a change in the way we talk about pregnant women who suffer from SUDs is warranted and may also help alleviate, to a certain extent, the negative stigma associated with this issue. For example, undertones of moral-judgment can be found in the specific language used to talk about pregnant women and SUDs both in social settings, as well as professional literature. Research studies often refer to these individuals as “pregnant women who use illicit drugs (Roberts & Pies, 2011),” and “pregnant substance abusers (Ondersma, Winhusen, & Lewis, 2010).” These terms carry negative value judgments that contribute to the stigma associated with pregnant women who suffer from SUDs. Consider how moving from labels that carry moral-judgments such as “pregnant drug users,” to terms that allow for the individual to be viewed as someone in need of treatment for a disorder such as “pregnant women suffering from SUDs,” could potentially impact current approaches by creating a space for our society to respond with empathy and understanding as opposed to disgust and judgment.

Social Work’s Interest

Social work professionals have an ethical obligation to be allies of marginalized populations and to advocate for social justice (National Association of Social Workers, 2013). With society’s current response to pregnant women suffering from SUDs being that of criminalization, these women experience a significant differential impact in terms of legal and social ramifications associated with their mental illness in comparison to their non-pregnant counterparts, making them a population in need of allies and advocacy. With their commitment to advocacy and social justice (National Association of Social Workers, 2013), social workers are well equipped to position themselves at the forefront of this issue. From this stance, social workers may be instrumental in facilitating a shift away from society’s response of criminalization and towards a public health model that advocates for comprehensive SUD treatment services that are specifically tailored to meet the needs of pregnant women and encourage utilization of other healthcare services as well.

Public Health Models Supporting Decriminalization

In the United States, prenatal substance use is an eminent public health issue in need of remediation (Merritt et al., 2011). In an effort to address this issue, scholars Jos, Perlmutter and Marshall (2003) suggest a holistic public health model that is comprehensive, preventative, and utilizes professional encounters in a variety of service milieus as opportunities for engagement in treatment. Other scholars also emphasize the importance of recognizing unique needs of this population including services such as transportation, childcare, prenatal care, and parenting skills development to name a few (Jackson & Shannon, 2012). It is imperative that these needs be considered and services delivered in a setting that is empathetic and compassionate rather than shame-provoking and confrontational in order to encourage treatment engagement and completion so that we may continue to promote the well-being of both mother and baby (Eckenwiler, 2004). In further support of a model that provides for comprehensive treatment programs and support services tailored to the unique needs of this population are researchers who in viewing the issue of prenatal substance use through a public health model lens, have found treatment to be more cost efficient in the long run in comparison to incarceration (Jos, Perlmutter, & Marshall, 2003).

Rather than responding to the issue of pregnant women suffering from SUDs with punitive legal methods and criminalization that are known to be ineffective in their goal of promoting the safety of both mother and baby, it has been suggested by scholars that we, as a society, shift our legal efforts to advocating for

policies that would allow for us to address this issue with a public health approach (Eckenwiler, 2004). Doing so would allow for the creation of more treatment programs that are specific to the unique needs of pregnant women and would improve accessibility of these services by removing barriers such as negative stigma associated with being a mother in treatment, fear of prosecution and loss of parental rights (Jackson & Shannon, 2012).

Conclusion

The prevalence of mental illness within our society is extensive and SUDs are no exception. As a society, we must be compassionate and advocate for the treatment of mental disorders rather than criminalization and punishment for the individuals who are affected by them. Pregnant women who suffer from SUDs are not immoral beings in need of punishment. They are individuals suffering from a mental disorder in need of treatment and understanding. The criminalization of these women strips them of their constitutional rights and contributes to their oppression. As such, social workers must become allies to these women and advocate for social justice, equality under the law, and access to relevant treatment services that are specific to their unique needs. Rather than ascribing additional judgment, social workers must prescribe additional support in order to break down the barriers to necessary services and create more opportunities for the promotion of healthy moms, healthy babies and a healthy society.

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Ensuring Justice for Incarcerated Survivors of Domestic Violence Through Legislation and Interdisciplinary Education Initiatives

Lauren P. Schroeder

Introduction

Federal studies show that over half of female inmates have been physically or sexually abused prior to incarceration (Wolf-Harlow, 1999, p. 1).¹ Of these women, an intimate partner harmed sixty-eight percent (The National Clearinghouse for the Defense of Battered Women, 2009, p. 5). Domestic violence leads to severe mental, physical, and emotional health problems for victims (National Coalition Against Domestic Violence [NCADV], 2007a, pp. 1-2). Many of the women in prison who are survivors of domestic violence are victims of rape, forced prostitution, and other forms of exploitation (Jacobs, 1999). For them, the abuse they suffered led to their criminal activity (Jacobs, 1999). For example, victims of domestic violence are often arrested for drug offenses or prostitution (Jacobs, 1999, p. 460). However, among some of the worst examples of the effect of domestic violence on criminal behavior are cases in which a battered woman kills her abuser (Jacobs, 1999, p. 461).

Society has been slow to address the needs of these survivor defendants (Jacobs, 1999). In part, this is because these women do not present as victims, but as criminals (Jacobs, 1999, pp. 460-461). Prostitutes, thieves, and drug users are often seen as individuals who will destabilize society and not as victims of domestic violence (Jacobs, 1999). However, it is essential that this connection is examined and addressed by the criminal justice system and those that work with both victims of domestic violence and incarcerated women because experiencing violence is often a pathway to crime (Jacobs, 1999). Comprehensive legislative reform should be enacted specifically recognizing the impact of domestic violence on its victims' criminal activity. Additionally, interdisciplinary educational initiatives should be undertaken to assist judges and attorneys in understanding the lower level of culpability

¹ This statistic reflects both those incarcerated in state facilities only.

some defendants have due to their history of abuse. Such initiatives should be available to all professionals working with these populations, such as social workers in prisons or community-based treatment facilities.

Background

In order to understand why incarcerated survivors of domestic violence are a subset of the population about whom to be concerned, it is important to know about the effects of domestic violence and how experiencing domestic violence can lead to committing criminal offenses. This part will first provide a brief, general overview of domestic violence. It will then specifically discuss the impact of domestic violence on crime—focusing specifically on drug offenses, prostitution, and murder.

Domestic Violence

Domestic violence is a serious problem facing women today. Studies show that one in four women will experience domestic violence in their lifetime (NCADV, 2007a, p. 1). Though domestic violence can affect both male and female victims, eighty-five percent of the victims are women (NCADV, 2007a, p. 1).² Domestic violence takes many forms and leads to serious consequences. Perpetrators of domestic violence sexually abuse, rape, and physically assault their victims (NCADV, 2007a, p. 2). Additionally, perpetrators use psychological abuse to intimidate their victims, coerce their victims into illegal activity such as prostitution and drug dealing, isolate their victims by controlling their contact with friends and family, and emotionally traumatize their victims by minimizing the abuse

² Therefore, while this article is cognizant of the fact that both men and women are victims of domestic violence, it will focus mainly on female victims and the impact of domestic violence on commission of criminal offenses by women.

or humiliating them (NCADV, 2007a, p. 2).³ Domestic violence can result in long-term trauma or even death to the victim (NCADV, 2007a, pp. 1-2).⁴

Domestic violence is more than just isolated incidents of battering. Dr. Lenore Walker developed a “Cycle Theory of Violence” to explain the experience of a victim of domestic violence (Walker, 1977, p. 53; Perrone, 2012, p. 651). The first stage of this cycle is a period in which tension between partners begins to rise and the victim can sense that her partner is becoming “edgy and more prone to react negatively” to events (Walker, 1977, p. 53). During this stage, there are small episodes of violence that are quickly hidden, and victims are often able to pacify their partner (Walker, 1977, p. 53). This stage is followed by an “acute battering incident” (Walker, 1977, p. 53).⁵ It becomes impossible for victims to know how long stage one will last before the explosion, but it always inevitably occurs (Walker, 1977, p. 53).⁶ Finally, the third stage, or the contrition stage, begins (Walker, 1977, p. 54). This stage is a period of loving behavior by the abuser during which the abuser becomes the ideal partner (Walker, 1977, p. 54).

Despite this cycle, many women find it difficult to leave abusive relationships (Walker, 1977, pp. 55-56). Women might stay due to economic concerns (Dutton & Painter, 1993, p. 105; Bennett-Herbert, Cohen-Silver, & Ellard, 1991, pp. 311-312; Walker, 1977, p. 54), shame (Bennett-Herbert et al., 1991, p. 312; Walker, 1977, p. 54), and/or attachment to their partner (Dutton & Painter, 1993, p. 105; Bennett-Herbert, et al., 1991, p. 313; Walker, 1977, p. 54). Of these reasons, attachment is often the most difficult to understand (Dutton & Painter, 1993, p. 105). Rather than support the victim, many people blame her for staying in the relationship (Dunlap, 2004, pp. 576-577).⁷ However, the complex psychological trauma

experienced by victims of domestic violence leads them to appraise their relationships in a way that minimizes the abuse and maximizes their attachment to their abuser (Dutton & Painter, 1993, p. 105; Bennett-Herbert et al., 1991, p. 313; Walker, 1977, p. 54).

Two aspects of the cycle of violence contribute to this “traumatic bonding”: the power imbalances and the intermittency of the abuse (Dutton & Painter, 1993, p. 105). The power imbalance between intimate partners leads to feelings of depression and anxiety in the abused (Dutton & Painter, 1993, p. 105). These feelings result in the victim feeling helpless and less capable of defending herself, which in turn makes her feel more in need of her dominator (Dutton & Painter, 1993, p. 105).⁸ As a result, the abuser gains more power and the victim loses power (Dutton & Painter, 1993, p. 107). While the victim’s self-esteem drops, the abuser’s sense of power inflates, and he uses the abuse to maintain this power differential (Dutton & Painter, 1993, p. 107). Secondly, the intermittency of abuse, or existence of the contrition phase (Walker, 1977, p. 54), allows victims of domestic violence to view the abuse as an abnormal part of the relationship (Dutton & Painter, 1993, p. 105). The improved and loving behavior after a violent attack provides reinforcement for the victim to stay in the relationship (Dutton & Painter, 1993, p. 105). The attachment and bonding caused by domestic violence can be so strong that attachment feelings have been found even after the victim leaves the relationship (Dutton & Painter, 1993, p. 105).

Incarcerated Survivors of Domestic Violence

The percentage of women incarcerated has increased dramatically (Harrison, 2006, p. 4). Since 1995, the number of female prisoners has grown fifty-seven percent (Harrison, 2006, p. 4). Studies have shown that women involved in the criminal legal system are disproportionately survivors of domestic violence (Kubiak et al., 2011, p. 14). They are generally low-income women of color who are unemployed and have not obtained a high school diploma (Kubiak et al., 2011, p. 14). Additionally, they are likely to have mental health and substance abuse issues

³ See the NCADV Fact Sheet for a comprehensive summary of the types of abuse victims of domestic violence suffer (NCADV, 2007).

⁴ Additionally, one-third of female homicide victims are killed by an intimate partner (NCADV, 2007, p. 1)

⁵ The second stage is described as “the explosion” (Walker, 1977, p. 53).

⁶ Some women even go as far as to provoke the acute battering incident in order to have it over with (Walker, 1977, p. 54).

⁷ Dunlap (2004) argues that mothers who are victims of domestic violence face a paradox when faced with the decision to leave (pp. 576-577).

⁸ It has also been shown that these feelings of depression to arise from self-blame by the victim (Bennett-Herbert et al., 1991, p. 312).

(Kubiak et al., 2011, p. 14). While the most common crimes committed by women are drug offenses, there is evidence to suggest that women incarcerated for violent crimes did so acting in self-defense against intimate partners (Kubiak et al., 2011, p. 14; Madden, 1993, p. 1).

Drug Offenses

Substance abuse is a pervasive problem within domestic violence relationships. Approximately “sixty-one percent of domestic violence offenders also have substance abuse problems” (NCADV, 2007b, p. 1). Furthermore, studies have shown that “thirty-six percent of victims in domestic violence programs also had substance abuse problems” (NCADV, 2007b, p. 1). Women who have experienced abuse are “fifteen times more likely to abuse alcohol and nine times more likely to abuse drugs than women who have not been abused” (NCADV, 2007b, p. 1).

When victims of domestic violence are arrested, incarcerated, or convicted for drug offenses, they are often facilitating the drug dealings of their abusive partners (Raeder, 2006, pp. 91-99). For instance, their partners might use coercive tactics to force them “to act as lookouts, buy them guns,” or participate in illicit drug dealing in other ways (Raeder, 2006, pp. 91-99). Furthermore, the economic marginalization of victims of domestic violence can play a role in the commission of the offense (Raeder, 2006, pp. 91-99). When an abuser controls a partner’s finances, the victim might have to resort to criminal activity (Raeder, 2006, pp. 91-99). Additionally, the high correlation between substance abuse and domestic violence can lead to incarceration due to a victim’s own use of illicit substances (NCADV, 2007b, p. 1).

The impact of domestic violence on a victim’s drug offenses is illustrated by the case of Cindy Stewart (*People v. Stewart*, 2013). Ms. Stewart was convicted of aggravated participation in methamphetamine manufacturing after her husband was arrested for manufacturing the drug (*People v. Stewart*, 2013, p. 1). She admitted that she had purchased lithium batteries for her husband on multiple occasions and also assisted him with removing pseudoephedrine pills from their packaging (*People v. Stewart*, 2013, p. 1).⁹ Additionally, she admitted that she

⁹ Lithium batteries and pseudoephedrine pills can be used to manufacture methamphetamine (*People v. Stewart*, 2013, p. 1).

knew her husband was making methamphetamine and that she had retrieved several other materials needed for the process for him (*People v. Stewart*, 2013, p. 1). For fifteen years, Ms. Stewart’s husband controlled her, physically abused her by hitting and choking her, and threatened to kill her (*People v. Stewart*, 2013, p. 2). Ms. Stewart testified that if she refused to purchase pseudoephedrine pills for her husband or if she bought the wrong pills, her husband would physically abuse her (*People v. Stewart*, 2013, p. 2). Despite Ms. Stewart’s experience, the court found that she did not have a reasonable belief that physical abuse would occur if refused to help her husband manufacture methamphetamine (*People v. Stewart*, 2013, p. 3).¹⁰ Additionally, the court stated that Ms. Stewart could have simply just left her residence while her husband cooked methamphetamine or called the police (*People v. Stewart*, 2013, p. 4).

Ms. Stewart’s situation accurately depicts the experiences of women experiencing domestic violence described above. The court’s suggestion that Ms. Stewart should have just left or called the police on her abusive husband is contrary to what domestic violence research shows as reasonable responses to an abusive partner and is a form of victim blaming. Women find it difficult to leave abusive relationships in part because of economic concerns and fear of future, more harmful abuse. Notwithstanding the psychological attachment many victims have with their batterers, Ms. Stewart was financially dependent on her husband and had been abused in similar past situations (*People v. Stewart*, 2013, p. 2). The court’s failure to understand why simply leaving was not an option indicates its lack of recognition and understanding about the situation Ms. Stewart faced.

Prostitution

In addition to drug offenses, there is a high correlation between prostitution and domestic violence. One study reported that seventy to ninety-five percent of women engaged in prostitution were physically assaulted and sixty to seventy-five percent were raped in prostitution (Farley & Butler, 2012, p. 3).

¹⁰ The court focused on the fact that she did not testify to specific instances of abuse after she refused to participate and stated she should have hired an expert to testify to her experience as a battered woman if she wanted the necessity defenses to work (*People v. Stewart*, 2013, p. 3).

Economic need and force or coercion by a partner can often lead to women engaging in sex work (Farley & Butler, 2012, p. 3). Many of these women also engage in prostitution for drugs (Richie, 1996, p. 114). Furthermore, among the many barriers to women safely exiting prostitution is the existence of an abusive partner (Against Violence and Abuse [AVA], 2010, p. 2). Studies have shown that the primary link between domestic violence and prostitution is that, for many women involved in prostitution, their partner is the person who “encourages their entry . . . , profits from it, and/or prevents their exit.” (AVA, 2010, p. 2). The individual’s abuser often acts as her “pimp,” further harming her ability to leave both the relationship and the prostitution (AVA, 2010, p. 2; Jacobs, 1999, p. 468). Women who are involved in both prostitution and domestic violence face abusers who use coercion, intimidation, and threats; encourage drug and alcohol dependence; economically abuse them by controlling earnings; and engage in many other power and control tactics to exert their dominance and hurt their victims (AVA, 2010, p. 2-3).¹¹

The challenges faced by victims of domestic violence who are forced into prostitution are exacerbated by a society that has difficulty viewing women who engage in prostitution as victims (Jacobs, 1999, p. 469).¹² The case of Chantal exemplifies why society must change this viewpoint and understand the intersection between domestic violence and prostitution (Leidholdt, 2013, p. 16). Chantal became involved with a man living in her inner-city neighborhood, but he became abusive shortly after she became pregnant (Leidholdt, 2013, p. 17). She left him after the birth of their son, but returned after he vowed he would never harm her again and told her that he desired to be a father (Leidholdt, 2013, p. 17). After a period of contrition and peacefulness, he began to control and criticize her about how much money she made (Leidholdt, 2013, p. 17). Chantal was not yet aware that the father of her child was a pimp known for his brutality and nickname, “Obsession.” (Leidholdt, 2013, p. 16). Eventually, he disclosed he was a pimp and began pressuring her to enter into prostitution

(Leidholdt, 2013, p. 17). He soon broke down her resistance and she began selling herself at night (Leidholdt, 2013, p. 17). Chantal’s abuser would beat her when she refused to go out at night (Leidholdt, 2013, p. 17). “Obsession” controlled her life (Leidholdt, 2013, p. 16-17). When she was arrested for prostitution, he paid her legal fees and added it to her “debt,” further preventing her from leaving their relationship or prostitution (Leidholdt, 2013, p. 20). Eventually, neglect proceedings were initiated against Chantal because she had left her son alone while she engaged in prostitution (Leidholdt, 2013, p. 16).¹³ However, the judge did not acknowledge the presence of her abuser and pimp, nor did she attempt to understand the dynamics that lead to Chantal having to choose prostitution over her son (Leidholdt, 2013, p. 16).

The presence of her abuser and lack of understanding by the judge left Chantal unable to defend or protect herself and her son. The power and control tactics familiar to domestic violence advocates were present in the relationship between Chantal and her abuser (Leidholdt, 2013, p. 19; AVA, 2010, p. 3). He isolated her from her friends and family and monitored her every action (Leidholdt, 2013, p. 16; AVA, 2010, p. 3). He emotionally abused her by telling her how much he loved her and then forcing her to prove her love by walking the street (Leidholdt, 2013, p. 19). By physically abusing her when she refused to go out one night because another prostitute had recently been murdered, he ensured that she would be forced to prostitute herself whenever he demanded or face another beating (Leidholdt, 2013, p. 19). By controlling her finances and paying her legal fees, he forced her to stay with him (Leidholdt, 2013, p. 20). Finally, he used intimidation in the courtroom, ensuring that she would not be able to defend her actions even if the judge indicated an understanding (Leidholdt, 2013, p. 16). This case demonstrates the intersection between domestic violence and prostitution, and the need for close examination in all instances involving sex work to protect the victim from his or her abuser.

Murder and Other Violent Offenses

¹³ Though involvement of victims of domestic violence in the child welfare court system is an important issue, it is beyond the scope of this paper, which focuses specifically on involvement in the criminal court system. For more information of the intersection of child welfare and domestic violence, see generally, note 7 (Dunlap, 2004, pp. 576-577).

¹¹ AVA (2010) describes a power and control wheel for women involved in prostitution and experiencing domestic violence (pp. 2-3)

¹² Jacobs (1999) notes that even the feminist movement resists actively seeking reform to help prostitutes (p. 469).

Though women who kill their abusers in self-defense make up a smaller portion of women charged with crime (Jacobs, 1999, pp. 642-643), their cases exemplify the problems and lack of understanding victims of domestic violence face in court. One-third of female murder victims are killed by an intimate partner (NCADV, 2007a, p. 1). Furthermore, in seventy to eighty percent of intimate partner homicides, regardless of which partner was killed, the man physically abused the woman prior to the murder (NCADV, 2007a, p. 1). Victims of domestic violence live in conditions that can force them to take criminal actions to cope with the abuse and protect themselves and their children (Avon Global Center for Women et al., 2001, p. 3). In extreme cases, victims physically harm or attempt to kill their abuser in self-defense (AGLCW, 2001, p. 3). Despite efforts to show juries and judges that many victims of domestic violence kill out of a reasonable fear that they will suffer death or great bodily harm that they consider imminent, these trials often result in a conviction with a high sentence (AGLCW, 2001, pp. 3-4).

In situations where the victim of domestic violence kills her abuser in a non-confrontational situation, self-defense theory and law should exonerate her (Maguigan, 2001, p. 385). A successful self-defense claim generally requires that there be a reasonable belief of imminent death or great bodily harm (Maguigan, 2001, p. 385). However, when imminence is confused with immediacy, or in jurisdictions where only immediacy is examined, courts are often unable to comprehend how the use of force is justified (Maguigan, 2001, pp. 414-416). States are not consistent with their use of the term imminence over immediacy (Maguigan, 2001, p. 414 n. 119). Immediate is generally used to reflect a preference for a narrow, instant focus, while imminent is used to refer to focus on the broader surrounding circumstances (Maguigan, 2001, p. 414). Domestic violence research has shown that the threat of death or great bodily harm can be objectively reasonably imminent to a victim of domestic violence regardless of whether her abuser is immediately attacking her (Maguigan, 2001, p. 414). Still, over “seventy percent of all battered women who kill do so when faced with an ongoing attack or immediate threat of death or serious bodily injury.” (Maguigan, 2001, p. 384). However, even in these situations courts fail to understand the complexities of the domestic violence

relationship and its role in the commission of the crime.

Sheila Beasley was convicted of second-degree murder for shooting her husband and sentenced to eight years’ imprisonment (*People v. Beasley*, 1993, p. 1237). Approximately two weeks after their marriage, her husband began physically and verbally abusing her (*People v. Beasley*, 1993, p. 1237). This abuse was continuous, and could be incited for instances as minor as Ms. Beasley forgetting to bring Ding Dongs home for her husband (*People v. Beasley*, 1993, p. 1237). Ms. Beasley’s husband would give her bruises, scratches, and black eyes, but as the marriage wore on, the abuse became worse (*People v. Beasley*, 1993, p. 1237). Her husband began raping her and on one occasion broke her tailbone (*People v. Beasley*, 1993, p. 1237). One night, Ms. Beasley’s husband came home drunk and began hitting her (*People v. Beasley*, 1993, p. 1238). He cursed at her and told her she did not deserve to live (*People v. Beasley*, 1993, p. 1239). He began to stick her head in the toilet and continuously threatened to kill her and her family (*People v. Beasley*, 1993, p. 1239). At one point, he put a gun in her mouth and said, “Bang.” (*People v. Beasley*, 1993, p. 1239). Her husband fell asleep for a bit, but then got up and moved towards Sheila (*People v. Beasley*, 1993, p. 1239). Fearing for her life, she shot him (*People v. Beasley*, 1993, p. 1239). Despite finding that the evidence supported the conclusion that Ms. Beasley suffered from battered women’s syndrome,¹⁴ and therefore acted in self-defense, the appellate court upheld her conviction and stated that her belief in the need to use deadly force was unreasonable (*People v. Beasley*, 1993, pp. 1243-1244). As a result, Ms. Beasley spent eight years in prison, away from her children, two of whom were ill (*People v. Beasley*, 1993, p. 1237).

Addressing Domestic Violence in Courts

While domestic violence persists, in the last twenty-five years, some efforts have been made to assist incarcerated survivors of domestic violence. Part III will discuss these common law efforts and provide an overview of several recent legislative reform efforts made in California and

¹⁴ See the above discussion of the use of battered women’s syndrome in courts.

New York specifically aimed at helping this population.

Evidence of Battered Women's Syndrome

Beginning in the late 1970s, courts began admitting evidence of battered woman syndrome¹⁵ as part of a self-defense claim (Murdoch, 2000, p. 191; Masson, 1998, § 2a). Battered woman syndrome can best be described as a type of post-traumatic stress disorder that arises as a result of the sustained psychological and physical trauma and aggravating social and economic factors suffered by a victim of domestic violence (Masson, 1998, § 2a). As discussed in Part II–A, the cycle of violence, experience of post-traumatic bonding, and numerous economic and socially isolating components of abuse force victims to stay in abusive relationships (Masson, 1998, § 2a).¹⁶ In courts, expert or opinion evidence of battered woman syndrome can be allowed to help the trier of fact understand the unique pressures that force battered women to stay in abusive relationships and the trauma that alters their states of mind (Masson, 1998, § 2a).

Though the modern trend is to allow evidence of battered woman syndrome, several issues have arisen that can make it difficult for a trier of fact to understand its importance (Madden, 1993, p. 1; Maguigan, 2001, p. 385; Monacello, 1997). For instance, courts often refuse to give a self-defense instruction at all to juries in situations where the killing occurred in a non-confrontational situation (Murdoch, 2000, pp. 191-192). This issue often arises because of the traditional self-defense requirement that the threat of harm be imminent (Murdoch, 2000, pp. 192-193). The requirement of imminence for self-defense has been questioned (Murdoch, 2000, p. 217).¹⁷ Other scholars, however, have

argued that the current self-defense law should be protecting victims of domestic violence, and the issues arise because it is incorrectly or inconsistently applied across jurisdictions (Maguigan, 2001, pp. 402-405). For instance, some jurisdictions utilize a strict objective test when determining the reasonableness of force used against an abuser and a strict definition of imminence in which the threat of harm must be immediate (Madden, 1993, pp. 33-34). As a result, some advocates and scholars argue that jurisdictions must uniformly adopt the more flexibly defined self-defense doctrine to effectively ensure all people receive fair trials (Madden, 1993, p. 34; Maguigan, 2001, pp. 448, 456-457).¹⁸

Though there is much written on the use of battered woman syndrome in self-defense cases, less is written on the use of battered woman syndrome to claim duress in the commission of non-assaultive crimes (Maguigan, 2001, p. 385; Murdoch, 2000, p. 191). Despite inconsistent applications, use of battered woman syndrome in self-defense cases is still widely allowed (Monacello, 1997, p. 700). The same cannot be said regarding admission of battered woman syndrome to show duress (Monacello, 1997, p. 700). This defense applies specifically in cases where victims of domestic violence are forced by their abusers to actually or indirectly commit crimes (Monacello, 1997, p. 699). As explained above,¹⁹ the pressure to comply with the abuser's demands in order to avoid further beatings and the effect of battered woman syndrome on that pressure, leads to the battered woman defendant committing the crime under duress (Monacello, 1997, p. 700).

The elements of duress are very similar to the elements of self-defense (Monacello, 1997, pp. 725, 730-731). As in cases of self-defense, evidence of battered woman syndrome can demonstrate that the defendant acted under an imminent threat of serious bodily injury or death, had a well-grounded fear of this threat, and feared serious bodily injury or death was imminent if she did not comply with her batterer's wishes (Monacello, 1997, p. 725).

¹⁵ Some advocates prefer to use varying terms to describe what is best known as battered woman syndrome in order to not limit the issue to female victims of male abusers. (Hempel, 2011) However, for the purposes of this article, the author will refer to it as battered woman syndrome.

¹⁶ See also *supra* Part II–A (discussing the cycle of violence and why victims stay in abusive relationships).

¹⁷ Murdoch (2000) argues that juries should be allowed to consider self-defense claims in terms of necessity rather than imminence in order allow them to consider the totality of the facts in any given situation (p. 217).

¹⁸ Maguigan (2001) argues for an objective standard that incorporates subjective reasonable analysis (p. 448.) and that evidence of BWS should be admissible in all civil and criminal cases where state of mind evidence is relevant and admissible (pp. 456-457).

¹⁹ See the above discussion showing how a victim of domestic violence can be forced to commit crimes or risk facing further abuse).

Furthermore, evidence of battered woman syndrome can explain why this defendant became controlled by her abuser and had no opportunity or ability to avoid acting criminally (Monacello, 1997, p. 735). As a result, a flexible definition of duress that allows for the complete consideration of battered woman syndrome will help provide the trier of fact with the whole picture and ensure a fairer trial.

Current Reforms and Proposals

Currently two states have attempted comprehensive and notable legislative reform designed to better assist incarcerated survivors of domestic violence: California and New York. In addition to the above suggestions for pre-existing defenses rooted in common law, these efforts can help in creating a fairer system for these women.

California

In 1992, California officially recognized the admissibility of expert testimony on battered woman syndrome (Hempel, 2011). Prior to this, despite the use of such expert testimony in some cases, many women were unable to utilize such evidence or pled guilty before being aware of the possibility that this evidence could support a criminal defense (Hempel, 2011). Courts often ruled that such evidence was not admissible because it lacked sufficient scientific validity, and survivor defendants had counsel who was not aware of the existence of such testimony (Hempel, 2011). The recognition that this evidence is admissible was codified in January 1991 in the California Evidence Code.²⁰

Between 1992 and 2001, domestic violence advocates worked to obtain clemency for women who had been incarcerated before the

evidentiary rule was recognized (Hempel, 2011). However, despite these efforts, very few women received relief through the clemency process (Hempel, 2011). Additional efforts were made to encourage the parole board to recommend parole for these women (Hempel, 2011). A bill was passed directing the parole board to take into account information or evidence presented to it concerning battered woman syndrome, but the impact of it is uncertain (Hempel, 2011).

Finally, in 2001, California enacted California Penal Code § 1473.5, which created a habeas corpus claim for survivors of domestic violence who were convicted of murder before the above evidentiary rule was recognized (Hempel, 2011). This provision adds a statutory ground for habeas corpus relief for cases in which evidence relating to battered woman syndrome was not admitted at trial and when there is a reasonable probability that such evidence would have been sufficient to change the result of the proceedings (Hempel, 2011). The law has a few basic limitations (Hempel, 2011), such as it can only be used when the survivor defendant committed one of the delineated violent felonies before the final Evidence Code rule (S. 3337, 2013). Further, evidence of battered woman syndrome cannot have been introduced at their trial (S. 3337, 2013). Finally, the petition must state credible evidence that had such evidence been produced at trial there would be a reasonable probability, sufficient to undermine confidence in the conviction, that the result of the proceedings would have been different (S. 3337, 2013).

In order to implement section 1473.5, a coalition of community legal organizations, private law firms, and individual attorneys came together to form the California Habeas Project (Legal Services for Prisoners with Children [LSPC], 2014). The project identifies survivors of domestic violence who might be eligible for release and connects them with pro bono attorneys (LSPC, 2014). As of 2011, the California Habeas Project facilitated the release of nineteen survivors of domestic violence (LSPC, 2014).

New York

Domestic violence advocates in New York have been working on a legislative package to assist incarcerated survivors of domestic violence (Women in Prison Project, 2013). Though not yet law, the bill makes two proposals to establish more compassionate and fair

²⁰ In relevant part, the provision states: In a criminal action, expert testimony is admissible by either the prosecution or defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of . . . the criminal charge. . . . Expert opinion testimony on intimate partner battering and its effects shall not be considered a new scientific technique whose reliability is unproven (California Evidence Code § 1107, 2005).

sentencing for domestic violence survivors (Women in Prison Project, 2013). First, it gives judges discretion to sentence domestic violence survivors convicted of crimes directly related to the abuse they suffered to shorter prison terms, and in some cases to community-based alternative-to-incarceration programs instead of prison (S. 3337, 2013). The judge must find that, at the time of offense the defendant was a victim of domestic violence, that the abuse was a “significant contributing factor” to the crime, and that the recommended sentence is “unduly harsh.” (S. 3337, 2013). Additionally, it allows currently incarcerated domestic violence survivors to apply for resentencing (S. 3337, 2013).

The New York proposals focus more on sentencing than California’s laws, which focus on release (Hempel, 2011; Women in Prison Project, 2013). However, the focus on sentencing is beneficial because it give judges the ability to evaluate the circumstances of the offense in a more flexible manner (AGLCW, 2001, p. 4). Because of overly restrictive mandatory minimum sentencing laws, judges do not have the ability to sentence many of these survivor defendants to more reasonable sentences or alternative-to-incarceration community-based programs (AGLCW, 2001, p. 4).²¹ Also important to note is that this sentencing proposal would apply to crimes other than those committed against the abuser (AGLCW, 2001, p. 4).²² Additionally, the resentencing proposals set forth are necessary because retroactivity is central to the intent and purpose of any sentencing reform effort and would signify the government’s recognition that prior sentences were too harsh (Women in Prison Project, 2013).

Recommendations

Though many scholars and advocates have argued that legislative reform is not necessary to assist incarcerated survivors of domestic violence because current self-defense

²¹ Mandatory minimum sentencing laws are those that mandate a minimum sentence for a certain offense (AGLCW, 2001, p. 10). Such laws eliminate judges’ ability to evaluate the circumstances of the offense, including a victim’s status as a victim of domestic violence (AGLCW, 2001, p. 10)

²² AGLCW (2001) argues that Jenna’s Law, which currently permits judges to grant indeterminate sentences only to domestic violence survivors convicted of homicide or assault against their abusers is inadequate (p. 96)

and duress law allows for these defendants to justify their actions (Maguigan, 1991, p. 459), the harsh sentences and high conviction rates still imposed on victims of domestic violence show that something must be done. California’s efforts to recognize the importance of battered woman syndrome and their habeas corpus provision are laudable because they recognize the lesser level of culpability possessed by these survivor defendants (González, 2013, 1).²³ However, the laws in California still focus more on culpability as it relates to guilt or innocence, and not as much in regards to sentencing (González, 2013, 4). Conversely, New York’s laws focus primarily on sentencing modification (Women in Prison Project, 2013), which allows for flexibility in determining the true level of culpability, not just culpable or not (Women in Prison Project, 2013). This allows for the survivor defendant to benefit from flexible decision-making about their case (Murdoch, 2000, p. 217). Furthermore, expanding the focus to sentencing rather than just on guilt or innocence allows for a more politically feasible model of legislation.

Some scholars argue that the current common law already considers domestic violence during all stages of a criminal proceeding and efforts should focus on education rather than legislation to better implement current law (Maguigan, 1991, pp. 458-459). However, explicitly including evidence of domestic violence as something to consider during trial and sentencing will force judges to consider the evidence in the correct manner. Simply by bringing attention to the importance of this evidence will help judges and juries to consider it in a more comprehensive and correct light. Additionally, one of the barriers to a fair trial for survivors of domestic violence is attorneys’ failure to recognize the availability of using evidence of domestic violence for a defense of duress or self-defense or to show lesser culpability in sentencing (Hempel, 2011). Explicitly recognizing that a history of domestic violence is relevant will better inform attorneys’ recommendations and decisions. Most importantly, it would avoid survivor defendants pleading guilty to very serious crimes without being aware that this type of evidence could support a criminal defense and mitigated sentencing.

²³ “[E]xtensive studies demonstrate that domestic violence affects the culpability of a battered woman’s criminal acts.”

Proposals like New York's bill, which would lead to judicial discretion in sentencing allows for survivor defendants to be sentenced to alternative-to-incarceration programs (AGLCW, 2001, pp. 4-5). These programs lower recidivism rates, cost less than incarceration, help participants heal from abuse and become productive community members (AGLCW, 2001, p. 4). Furthermore, survivor defendants are exceptionally good candidates for these programs because the vast majority of them are first-time offenders and pose little risk to public safety (AGLCW, 2001, p. 4). In fact, a New York study completed for the bill found incredibly low recidivism rates for survivors of domestic violence (AGLCW, 2001, p. 5).

Finally, explicitly stating that histories of domestic violence are relevant to culpability at trial or during sentencing will undoubtedly encourage attorneys to utilize the evidence in their cases and urge judges to give full consideration to the importance of this evidence. However, education initiatives are needed to ensure that judges and attorneys thoroughly understand how histories of domestic violence can impact an individual's culpability. Interdisciplinary efforts can help attorneys and judges understand the psychological and sociological theories that explain why

experiencing domestic violence can contribute to the commission of a crime. Social workers at community-based alternative-to-incarceration can assist in these efforts as well through their day-to-day experiences with women who face these challenges. Additionally, interdisciplinary education efforts can help social workers and other individuals working with these survivor defendants understand the criminal justice system these women face.

Conclusion

The majority of women currently incarcerated have experienced domestic violence in their lives, and for many of them, the trauma they experienced directly impacted their commission of a criminal offense. However, though these women have a lesser level of culpability and are much more capable of becoming productive members of society, the criminal justice system has failed them. Comprehensive legislative reform explicitly recognizing their experience supplemented by interdisciplinary education efforts would be a successful first step to ensuring justice for these forgotten members of society.

Lauren P. Schroeder is a Civitas ChildLaw Fellow at the Loyola University Chicago School of Law and will obtain her Juris Doctor and Master of Public Policy in 2015. After graduation, she will continue to advocate for the right of women and children to obtain justice, opportunity, and to live lives free from all forms of violence. She wishes to thank Professor Anita Weinberg from the Loyola University Chicago School of Law for her support, guidance, and the opportunity to work on legislation designed to aid incarcerated survivors of domestic violence in Illinois.

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Mexico-U.S. Migration Dynamics: Reflections on Social Work Policy and Practice

Erin Malcolm, MSW

Abstract

The last 20 years have seen a dramatic influx of Mexican immigration to the United States. In fact, Mexican immigrants accounted for three-quarters of the overall increase in the U.S. Hispanic population between 2000 and 2010 (Ennis, Ríos-Vargas, & Albert, 2011, p.2). This phenomenon is not without cause. On January 1, 1994, the North American Free Trade Agreement (NAFTA) went into effect with devastating results to the Mexican countryside and the people who depended on it for their livelihood, while simultaneously benefitting the private sector (Fernández-Kelly & Massey, 2007). NAFTA continues to have an impact today, resulting in a gross unequal distribution of wealth in Mexico (Human Development Index, 2012) as well as a severe lack of work opportunity that remains the number one driving force of migration (Danielson, 2013). This paper provides a discussion of these and other influences, an overview of the complex push and pull factors ingrained in the U.S.-Mexico migratory relationship, an examination of the Mexican family structure as impacted by migration, and the significance of all of this in terms of social work practice.

Keywords: Immigration, migration, social work, policy, Mexico

Preface

For this paper, I draw on my experience in Mexico as a U.S. social work student studying migration. The two-week course consisted of lectures and field visits where we had the opportunity to meet with migrants and hear from Mexican migration experts. We were offered a multidisciplinary perspective of migration through speakers that had diverse backgrounds ranging from non-governmental organizations (NGOs), religious affiliations, economics, psychology, social work, and more. In-text citations for these lectures appear in this paper as

“personal communication”, and a list comprising of each speaker and his or her affiliation is provided (Appendix A). My experience in Mexico helped me to integrate policy and practice implications of migration for my own professional formation, and this paper is a reflection of that integration.

Overview

According to 2010 United States Census Bureau data, “more than half of the growth in the total population of the United States between 2000 and 2010 was due to the increase in the Hispanic population” (Ennis, Ríos-Vargas, & Albert, 2011, p. 2). Of this, the Mexican population accounted for about 11.2 million people, roughly three-quarters of the overall increase in the Hispanic population (Ennis et al., 2011, p. 2). Koser (2007) says, “An increasing number of people migrate several times during their lives” (pp. 8-9). In this day and age, more people are living outside of their country of origin than ever before. In fact, one in every ten Mexicans worldwide are living in the U.S. (M. Vidal de Haymes, personal communication, May 16, 2013). This dramatic influx of people coming into the United States is not without cause. Mexicans are migrating to the U.S. for many reasons, the principal reason being the lack of work opportunities—and therefore poverty—in the sending country. On the surface, economically driven emigration¹ from Mexico seems to be a strange phenomenon. According to the Human Development Index (2012), Mexico is a relatively “wealthy” country, falling only 0.162 points behind the U.S. After the data is filtered and adjusted for inequality, the variance increases to reveal a gross unequal distribution of wealth in Mexico, which is a large

¹ *Emigration* refers to the process of persons migrating out of a country whereas *immigration* refers to the process of persons migrating into a country. *Migration* is a broader term enveloping both of the former and can be used interchangeably. All three terms are used in this paper.

contributing factor to the high rates of emigration (M. Vidal de Haymes, personal communication, May 16, 2013). These, along with many other complex factors, must be considered when attempting to understand the Mexico-U.S. migratory relationship. As a receiving country, the U.S. spends a great deal of time dwelling on the challenges posed by migration for the economy and cultural dynamics. Therefore as social workers, it is important not only to examine the driving forces behind migration in depth, but also to put more emphasis on shifting family dynamics and consider the ever-relevant political climate as it affects migrants themselves. Only then will social workers be able to appropriately intervene on micro- and macro-levels with these clients.

The Reality of Migration

Before anything else, it is important to first understand the driving forces behind migration: What extreme set of circumstances can impel someone to make the impossible decision to leave their country, their home, and their family behind while risking their lives in the process? One hypothesis is the Social Vulnerability Theory, which defines socially vulnerable people as those who are in states where they can be hurt—such as a state of unemployment (Díaz, 2004). Therefore by argument, those who migrate are socially vulnerable (J. García, personal communication, May 13, 2013). If someone is in a state of unemployment he or she might be considered socially vulnerable because of an inability to provide for himself or herself, or for his or her family, and therefore decides to migrate to seek employment elsewhere. A survey done at the Aid Center for Deported Migrants (CAMDEP) found that four of five migrants left home because of lack of work opportunities, thus making unemployment the number one reason for migration (Danielson, 2013). This same survey found that the distant second most common reason for Latin American migration was for family reunification, and only one in twenty-five migrants reported fleeing from violence as a cause for migration (Danielson, 2013). Even though migrating for family reunification fell far behind the number one reason, it has seen a spike in popularity in recent years. In 2005, 14% of people came to the U.S. to reunify with family, but in 2010, that number had more than doubled; 30% reported family reunification motivations, which suggests a small shift in the driving forces

of migration (L. Meza González, personal communication, May 24, 2013).

Violence, the third most prevalent reason for migration is notably more common in Central American sending countries, but it still remains a problem in Mexico. Many people flee after receiving death threats or experiencing some sort of abuse (Danielson, 2013). A Mexican study broke down the likelihood of migration due to violence by state and gender and found that in the Mexican state of Guerrero, men were significantly more likely than women to emigrate due to violence, which could be a result of the heightened organized crime and drug-related violence in that state (Danielson, 2013). However, in the southern state of Chiapas, women were four times likelier than men to migrate because of violence (Danielson, 2013). Further research is required to explain the gender discrepancies.

Besides migrating for work, for family reunification, or as a means to flee violence, some also make the decision to migrate in pursuit of a better quality of life, better educational opportunities or any combination of the above. Many migrants seek recognition or social prestige in their home country by sending or bringing home material items from the United States; sometimes the difficult journey in itself is seen as a ritual to adulthood for children and adolescents (G. Polanco Hernández, personal communication, May 23, 2013).

Whatever the specific reasons are, it can be certain that the influence of the media and the Internet only enhance the appeal for those considering the journey. In movies and television the United States is portrayed in context of the glamorous and successful lives of people living in great, thriving cities such as New York and Chicago. If an outsider has only the lives of these characters as a frame of reference for life in the U.S., it is fairly understandable why he or she might believe it. These media-driven misconceptions about success in the United States push migration forward (Cammisa, 2009). Hand-in-hand with this is the influence of the Internet. The expanding availability of the Internet has connected the world in ways unlike ever before: economic disparities as they vary from country to country are becoming increasingly visible, and these realizations are driving people to leave their lives behind to pursue something better, such as the success-ridden life seen on the big screen or online (Koser, 2007, p. 34). Moreover, the migrants themselves can have a hand in further

perpetuating these misconceptions (G. Polanco Hernández, personal communication, May 23, 2013). After having risked and sacrificed everything to endure a horrible and dangerous journey north, many want loved ones in Mexico to believe it was all worth it. For this reason, migrants will oftentimes lie to friends and family about the quality of life in the U.S. (Germano, 2010). An interview with a migrant in *The Other Side of Immigration* confirms: “Nobody talks about the 12-14 hour work days, only the success” (Germano, 2010). People will tell stories of money and material objects, but omit descriptions of working conditions and living situations. All of these misconceptions add up to create generational trends of migration and family separation (Cammisa, 2009).

Migration is easier to conceptualize now than ever before because of constantly growing migration networks. More and more people are migrating, and as a result an increasing number of Mexicans have connections to friends or family in the United States. This new international network actually facilitates migration in three ways: by supplying information, financing the trip, and providing economic and social assistance by arranging a job or a place to stay (Koser, 2007, p. 36-37). It may lend some peace of mind to have some of these things figured out beforehand, but not many understand the actual risks and dangers of the journey.

Arriving at the decision to leave is challenging enough, but the weeks or months that ensue for irregular migrants are even more difficult. When it is not done legally, the trek across the northern Mexico border and into the United States is exhausting, traumatizing, dangerous, and, too often, deadly (Regan, 2010). Anyone who makes the attempt is threatened by extreme violence; many are maimed, detained, assaulted, exploited, or deported along the way (Rotella, 2012). The likelihood of being victimized by dangerous drug cartels, gangs, human traffickers, smugglers, and even U.S. Border Patrol is high (Regan, 2010). Migrants and their families have become merchandise for the cartels, as evidenced by kidnappings, human trafficking, money laundering and prostitution (Regan, 2010; Rotella, 2012). Previously the drug cartels conducted business with a low profile, but a collapse in the social order has led them to adopt a new, savagely violent profile to threaten and scare the public, making it more dangerous than ever for migrants to make the

journey illegally (P. de los Ríos, personal communication, May 23, 2013).

Social Justice and Policy

It is impossible to talk about the Mexican-U.S. migratory relationship without understanding the North American Free Trade Agreement (NAFTA) and its effects on the Mexican economy. NAFTA was designed to facilitate trade and open markets and expand opportunities for capital investment (Fernández-Kelly & Massey, 2007). On January 1, 1994 the policy went into effect (Martin, 2005, p. 100). The results were devastating for almost all Mexican populations, with only a few exceptions. Most of those who benefitted “represented narrow economic and political interests rather than the welfare of ordinary Mexicans or Americans” (Fernández-Kelly & Massey, 2007). The agreement was indeed successful in benefitting the private sector, but that is not how the proposal was sold to the public. Contrary to initial claims, NAFTA created little or no jobs in the tradable goods market of the Mexican economy (Blecker, 2005).

Another part of the NAFTA provisions was to tighten border security, which created an interesting dilemma: due to the increased feed market competition and therefore detrimental nature of NAFTA to the Mexican countryside, the need for the Mexican people to migrate increased while simultaneously making it immensely more difficult to do so (Fernández-Kelly & Massey, 2007). Something that had originally been designed in part to discourage illegal migration actually ended up decreasing circular migration and therefore increasing the number of Mexican populations living in the United States to unprecedented numbers. After NAFTA, it became more common for migrants to make the decision to settle in the U.S. rather than attempt the increasingly dangerous journey more than once (Fernández-Kelly & Massey, 2007). The disparity between the stated objectives and the actual outcomes of NAFTA was high because it “represented an attempt at economic integration without political integration” (Fernández-Kelly & Massey, 2007). This does not outright attribute the blame to NAFTA for all Mexico-U.S. migration that took place in the 1990’s, but it did not create the jobs in Mexico that it said it would and therefore did not have many preventative effects on emigration.

Even though NAFTA had a negative impact on the Mexican job sector, Mexico technically has relatively low “unemployment rates”. However, because there is no type of federal support for unemployed populations, it is a necessity for people to work in order to survive (L. Meza González, personal communication, May 24, 2013). Also consider that 44% of the people who are technically “employed” are earning less than the equivalent of two Mexican minimum wages, 65% that do have a job do not have access to social security, and as a result over half of the Mexican population is living below the poverty line (J. Cerro Castiglione, personal communication, May 23 2013). Because of these widespread employment issues as well as the level of corruption in the Mexican government, more migrants are now becoming political activists, aiming to raise public awareness about their own rights and other available programs. The Center for Rural Development offers subsidies for small businesses in Mexico, but the government does not broadcast these opportunities. As a result, very few people know about them, and the government bribes people rather than distribute the funds fairly (Germano, 2010).

In addition to these factors, there are many other political components at play in the U.S. that have an impact on migration. Temporary visa programs allow people from Mexico and other countries to come to the U.S. and work for a limited amount of time before returning to Mexico (Motomura, 2013). In theory, this seems like a simple way to facilitate legal circular migration, but unfortunately the programs can be much more corrupt in execution. The H-2A temporary visa program for agriculture work is slightly more regulated and protected than the H-2B temporary visa program for nonagricultural work, but they both have their weak points: dishonest employers, use of a middleman, falsifying hours, lack of work, among others (S. Farr, personal communication, May 16, 2013). The majority of workers that go to the U.S. on these visas are from Mexico (S. Farr, personal communication, May 16, 2013). Recent legislation has proposed changes to these programs for stricter regulations and better worker protection, but it is difficult to predict which provisions will pass.

There are a mixture of push and pull factors involved with migration. As aforementioned, most Mexican immigrants in the United States are young men looking for work, which suggests that the lure of economic success

is one of the principal reasons for migration. The wage differential between the U.S. and Mexico is a significant pull factor that works in unity with the significant push factor of absent opportunity and social vulnerability in Mexico (L. Meza González, personal communication, May 24, 2013). This simple equation becomes problematic after adding in the misconceptions of what life is like in the United States. For example, migrating for the wage differential seems like a very appealing solution to economic distress in Mexico, but not many consider the cost of living, which is considerably higher in the U.S. than in Mexico. This is one of the aforesaid misconceptions that are perpetuated by family members who migrate.

The matter of remittances is also important to consider in immigration discussions. Remittances can be defined as “all transfers from the immigration country to the immigrant’s home country ... both to support family and kinship in the origin country, as well as savings or investments for future consumption at home” (Dustmann & Mestres, 2010, p. 63). In 2004, the number one sending country of remittances was the United States, which sent \$28 billion in remittances (Koser, 2007, p. 44). To put that number into perspective, the number one receiving country of remittances in 2004 was Mexico with \$16 billion received (Koser, 2007, p. 44). In fact, the income that Mexico receives from U.S. remittances is larger than the revenue received from tourism (L. Meza González, personal communication, May 24, 2013). It is essential to remember that anything having to do with migration, remittances included, is very difficult to accurately quantify because of the official and unofficial networks that are used.

In the last four years, remittances have decreased in all Mexican states, which is problematic because people who rely on remittances are extremely vulnerable (L. Meza González, personal communication, May 24, 2013). More often than not, remittances are utilized to pay for immediate expenses, not savings (N. Jiménez Caracoza, personal communication, May 23, 2013). When that source of income disappears, not many survival options remain.

Perhaps the most curious findings about remittances in Mexico are those of a study done by Pew Hispanic Center throughout all of Mexico and Central America that can be summarized as follows:

While in other countries remittance receipts are still concentrated in the

lower rungs of the socio-economic ladder, in Mexico remittances are flowing to all sectors of Mexican society and to virtually every region. Most significantly, in Mexico there are no statistically significant differences between remittance receivers and the general population in age, educational profile or income distribution (Suro, 2003, p. 4).

This norm of remittances perpetuates the problem by creating a culture of migration. When young people in Mexico witness the apparent reward of migrating, unrealistic expectations are placed on the possibility (Koser, 2007, p. 46). The same study by Pew Hispanic Center also found that of all adults in Mexico, those receiving remittances were almost twice as likely to want to migrate to the U.S. than those who were not (Suro, 2003). Examining this information from a policy viewpoint demonstrates that in order to create programs to diminish migratory pressures, the programs will need to be broad enough to encompass the flow of remittances that facilitates migration.

Social Work with Mexican Immigrant Families

Assuming that someone has beaten the odds and made it from Mexico into the United States, the family structure for that individual has been dramatically altered. Migrants arrive into the U.S. emotionally traumatized from the journey, with a sudden lack of support or family stability, and without an arena to release these emotions. A migrant in the *Which Way Home* video reflects on the transit experience as “something that you keep inside you, like a bomb” (Cammissa, 2009). The emotional risk factors of social and linguistic isolation as a barrier to sorting through these feelings of trauma, coupled with the monetary risk factors of a search for economic stability can all weigh very heavily on a person (G. Polanco Hernández, personal communication, May 23, 2013).

For social workers with immigrant clients it is important to keep in mind that migration and migratory policies affect everyone. Even if a client is a legal citizen of the United States, the chance that he or she knows or lives with someone of irregular status is fairly high: “In 2010, 5.5 million children, 4.5 million of whom were U.S. citizens, had at least one undocumented parent” (Danielson, 2013). Social

workers should remain cognizant of this phenomenon in practice settings. Furthermore, if a parent of a U.S. citizen child is deported, that child can be filtered into the welfare system, and the parent can even lose custody of the child (Danielson, 2013). These are the harsh structural realities faced by Mexican immigrant families living in the U.S., however it is also important for social workers to be aware of the challenges faced by those left behind.

The family that remains in Mexico is structured a little differently². Since it is primarily men who emigrate to the U.S. for work, the women who stay behind experience new roles. After their husbands leave, women are suddenly faced with the task of acting as both a mother and father figure to the children, which is challenging because culturally, children traditionally respect the authority of the father. These women may feel stressed about being closely observed by the rest of the community, and they may feel emotionally isolated due to a lack of freedom to express themselves (N. Jiménez Caracoza, personal communication, May 23, 2013).

Estranged from a father figure, the remaining children have the potential to become rebellious and are more prone to having addictions. This phenomenon intensifies when both parents emigrate (N. Jiménez Caracoza, personal communication, May 23, 2013). Potentially, children may become stressed, sad, and angry and have dreams to go to the U.S. to reunite with the missing family member (N. Jiménez Caracoza, personal communication, May 23, 2013). Sometimes children spend their childhoods simply expecting and waiting for the day that their parents will leave for the U.S. (Germano, 2010). Migration is a normal and natural part of life for many of these families. There is evidence that children grow up knowing this and are at greater risk for developing insecure styles of attachment (N. Jiménez Caracoza, personal communication, May 23, 2013).

Since women are not culturally allowed to express themselves in their communities, the communities themselves become more isolated (N. Jiménez Caracoza, personal communication, May 23, 2013). It is for these reasons that Jesuit

² In this article I focus on the impact of migration on the heteronormative nuclear family model. Encompassing all family models as they are impacted by migration produces a complexity that demands its own article entirely.

Migrant Services (JMS) has created programming with revolutionary support groups for communities affected by migration (E. Santos González, A. Luna Martínez, & C. Rosas Munguía, personal communication, May 14, 2013). The program follows a popular education model and the manual “is intended to be a tool that will help to transform the condition of subordination and low self-esteem of women” (Salamanca, Martínez, & Castillo, n.d., p. 22).³ JMS runs these self-help groups in rural communities where most of the towns consist of women, children, and the elderly, before training the women on how to run the groups by themselves. The groups consistently have a transformative effect on the communities—not only do women feel more supported and empowered, but they discover the courage to self-advocate and promote social change (E. Santos González et al., personal communication, May 14, 2013).

These programs can help to combat some of the challenges that arise if or when the husbands return and want to resume control of the family. In this instance, the women may experience another role-related crisis over shifting dynamics in responsibility and power, the children can become confused from not knowing whom the primary authority figure is, and conflict may emerge as a result (N. Jiménez Caracoza, personal communication, May 23, 2013). The groups help to teach the women how to speak up and advocate for themselves in such situations using a variety of different team building activities to do so. Programs such as these have already shown their success in Mexico by increasing women’s strength and self-esteem and by uniting entire communities together through a community-banking program (J. García, personal communication, May 13, 2013). If the programs work in Mexico, they can be adapted to work for the same populations in the United States. Educational and support groups for migrants living in a host country such as the U.S. can act as a source of information, education of rights, means for social support, and empowerment. By taking some of these methods and combining them with existing social work theories, clinicians can tailor interventions for the immigrant populations with whom they work.

³ Translated from Spanish. Original quote reads: “[Este manual] pretende ser una herramienta que te ayude a transformar la condición de subordinación y de baja autoestima de las mujeres.”

Traditional Mexican families are commonly intergenerational and the primary source of support for members, but this structure undergoes a drastic transformation into nuclear and single-parent families post-migration (Singh, Lundy, Vidal de Haymes, & Caridad, 2011). This rupture puts considerable strain on a family system. Family support has been identified as a protective factor for good mental health among Mexican immigrants, so it is even more important to consider the entire family system while working with this population (G. Polanco Hernández, personal communication, May 23, 2013). The challenge arises with the bi-national family structure—that is, families that are geographically separated but who maintain emotional ties to one another.

Practicing therapy with these spilt migrant family systems calls for an increased requirement to build the other family members into the room. This can be done both verbally, (e.g. “What would so and so say right now if he or she were here?”) and literally by utilizing technology such as Skype or a phone call. In either case, it is important to contact the missing family member(s) or bring them into the room in some way to include them in the process (M. Lundy, personal communication, May 13, 2013). Just because the missing family member(s) are not physically present does not mean they are not an important piece of the puzzle of the family. The emotional ties are still present, and this is why building all members into the therapy session can be so vital to the success of the treatment. Furthermore, it is critical to keep the big picture in mind while working with immigrant families in the U.S. Family members already have familiar routines and interactions with one another, but now in the new and unfamiliar environment of the host country. As is true with any client, finding flexibility and customization within modes of intervention to each unique case is key for this population.

Conclusions and Takeaways

Staying informed is only the incipience. At the micro level, social workers have a responsibility to act as empowering advocates for their migrant clients, serving as clinical therapists, educators, and service providers. At the macro level, social workers should be advocating for a comprehensive immigration reform in the U.S. that decriminalizes and destigmatizes the movement of migrants by developing new circular migratory strategies for

visas, as well as policy changes that make the path to citizenship easier to navigate. While this is currently unlikely, the mere act of opening this dialogue will increase awareness and visibility, and perhaps begin to change public mentality. Ideally the U.S. should make social services available to migrants regardless of legal status and strive to offer equal opportunities to all, but there may be challenges to immediate support. Understanding the driving forces and factual

consequences of migration is only the first step. The next is to take this information and expand educational opportunities for students of social work—most of whom will encounter immigrant clients in their professional careers—thus creating a new reservoir of informed advocates who will help debunk the surrounding myths of migration and begin forward progress toward change.

Erin Malcolm holds a Bachelor and Master of Social Work from Loyola University Chicago. As a student, she specialized in Mental Health and Migration and participated in immersion trips to Mexico City, Mexico; Sonora, Mexico; and Chiapas, Mexico. She has worked as an Editorial Associate for the Journal of Poverty and the Routledge Handbook of Poverty. Her research interests surround immigration and migration.

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Appendix A Lecture Notes Cited in Text

José Antonio Cerro Castiglione, PhD
Director, Department of Business
Universidad Iberoamericana, Ciudad de México
(*Iberoamericana University, Mexico City*)

Sarah Farr, Coordinator
Proyecto de Justicia en el Reclutamiento
(*Justice in Recruitment Project*)
Centro de los Derechos del Migrante
(*Center for Migrant Rights*)

Jaqueline García, Coordinator
Servicio Jesuita a Migrantes
(*Jesuit Migrant Services*)

Nayeli Jiménez Caracoza, Doctoral Student
Universidad Iberoamericana, Ciudad de México
(*Iberoamericana University, Mexico City*)

Angelina Luna Martínez
Servicio Jesuita a Migrantes
(*Jesuit Migrant Services*)

Marta Lundy, PhD
School of Social Work
Loyola University Chicago

Liliana Meza González, PhD
Department of Economics and Public Policy
Universidad Iberoamericana, Ciudad de México
(*Iberoamericana University, Mexico City*)

Graciela Polanco Hernández, PhD
Department of Psychology
Universidad Iberoamericana, Ciudad de México
(*Iberoamericana University, Mexico City*)

Patricia de los Ríos, PhD
Department of Political and Social Sciences

Federal Rule of Evidence 609 and the Failed Prison System

Griffen Thorne

Abstract

Congress' Federal Rule of Evidence 609 permits the introduction of evidence of certain prior convictions to impeach the credibility and character for truthfulness of witnesses in civil or criminal trials. Any witness who takes the stand is subject to impeachment—from non-party witnesses to criminal defendants. Rule 609 permits a wide range of evidence of prior felony convictions and even some misdemeanor convictions, barring convictions only if they occurred over ten years prior to trial. The ten-year bar on conviction evidence represents an important policy consideration of the Federal Rules—older convictions are considered far less probative of a witness's current character for truthfulness, and as such, their introduction would pose a great risk of conviction based on a propensity use of the evidence, a use the Rules rebuke.

However, there is an exception to the exception. If a person is convicted and imprisoned, the ten-year time period does not begin to toll until his release from confinement, however long that was. Accordingly, the ten-year extension treats imprisonment as non-rehabilitative, a mere prolongation of untrustworthiness. The extension thus demonstrates Congress' belief that the departments of correction do not actually correct criminal behavior, that it is instead a spawning ground for surreptitious and false behavior. Consequently, Rule 609 demonstrates the failure of rehabilitation in the criminal justice system.

Introduction

Federal Rule of Evidence 609 permits the introduction of evidence of prior convictions punishable by death or imprisonment for more than one year, or for any crime that involves dishonest acts or false statements (Federal Rules of Evidence [FRE] 609(a), 2013). Essentially, all prior felony convictions and misdemeanor convictions involving untruthfulness are admissible. Rule 609 limits the admissibility of prior convictions at trial to impeaching witnesses, including criminal defendants (FRE 609(a), 2013). Impeachment is a process by which evidence is raised or a witness is question

at trial to call into question a witness' credibility, generally the witness' character for untruthfulness (FRE 611, 2013). Any time a witness takes the stand, his or her credibility is at issue, including evidence of prior convictions, and a jury can infer that if the witness has prior convictions, he or she is presumably willing to violate the law, and is thus willing to lie on the stand (Roberts, 2014, p. 564).

However, Rule 609 recognizes that some prior convictions are not probative of a witness' character, and bars otherwise admissible convictions. Most significantly, Rule 609 bars convictions that are over ten years old (FRE 609(b), 2013). The justification is that older convictions do not accurately reflect a person's current character—if a convict has not been re-convicted in over ten years, he or she likely did not engage in criminal behavior, and as a consequence, his or her trustworthiness probably improved (*Mills v. Estelle*, 1977, p. 120).

The ten-year bar is flexible. If a person was convicted and was incarcerated, the ten-year period does not begin tolling until after his or her release (*Mills v. Estelle*, 1977, p. 120). A five-year sentence would mean that the conviction is admissible for fifteen years after the date of conviction instead of the normal ten. A person who was convicted and imprisoned faces substantially more exposure to impeachment than does a person who was convicted but not incarcerated.

The extension of the ten-year bar means that witnesses who served time are presumed to remain untruthful. These convicts are stigmatized, being deemed substantially less trustworthy than convicts who were not incarcerated—even if they were convicted of the same crime. This stigma is based on the idea that incarceration does not rehabilitate convicts, and represents one of the greatest failures of the American criminal justice system.

Rehabilitation, once considered the dominant goal of the justice system, is a lost cause. In 1949 in *Williams v. People of the State of New York*, Supreme Court Justice Hugo Black declared, "Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence" (p. 248). But much has changed since Justice

Black's comments. The very system that is supposed to rehabilitate criminal behavior is treated as a breeding ground for untrustworthiness. Federal Rule of Evidence 609 codifies Congress' concession that the justice system does not work, and that non-rehabilitation is expected. The system that was once believed to correct criminal behavior is now believed to perpetuate it.

Justifications for Imprisonment

One of the primary goals in any justice system is preventing recidivism, either by incapacitation (Champion, 1994, pp. 77-78), rehabilitation (Maltz, 2001, p. 10), or by increasing punishment for recidivists (Simmons, 1999, p. 199). However, dismal statistics on the enormous prison population highlight the failures of our justice system. For example, a Bureau of Justice study from 2005 found that within three years of release from prison, 67.8% of people were re-arrested, and within five years, 76.6% were re-arrested (National Institute of Justice, 2014). Today, nearly 2.3 million people are imprisoned in the United States—that is 25% of the world's prison population (National Association for the Advancement of Colored People [NAACP], 2014). Clearly, a large percentage of convicts are not rehabilitated. If the purpose of imprisonment is deterrence through punishment, then the system has utterly failed.

With this in mind, it is important to consider Rule 609's effect. If a defendant were released from prison and charged with another crime within the extended ten years, and if his prior conviction was a felony or misdemeanor involving untruthful conduct, there is a substantial likelihood that the jury might convict him based solely by propensity; if the convict committed a crime before, he or she must have done it again. Thus, Rule 609 perpetuates the cycle of imprisonment.

Regardless of whether imprisonment is designed to rehabilitate or punish, Rule 609 codifies the widely accepted belief that departments of correction do not correct. If imprisonment were successful, there would be no legitimate reason to extend the ten-year tolling period for convicts who are imprisoned. To understand why an extension of time would not be necessary in such a situation, a careful examination of Rule 609 is necessary.

Admissibility of Prior Conviction Evidence

Rule 609 provides that felony convictions *must* be admitted in either a civil or criminal case where the witness is not the defendant, subject to a balancing test set forth in Rule 403 (FRE 609(a)(1)(A), 2013). This balancing test looks to whether evidence of the trial would unfairly prejudice the witness, asking whether the risk of prejudice substantially outweighs the probative value of the conviction (FRE 403, 2013). In effect, most conviction evidence is admissible under this Rule.

In a criminal case where the witness is a defendant, evidence of his prior felony conviction may also be admitted, though the bar is much higher (FRE 609(a)(1)(B), 2013). Criminal defendants have an added protection—prosecutors must prove that evidence of prior convictions has such great probative value that it outweighs *any* prejudicial effect (FRE 609(a)(1)(B), 2013). This protection is different from Rule 403 in that if the prejudicial effect of the conviction is even slightly greater than its probative value, the conviction will not be admissible (FRE 609(a)(1)(B), 2013). To illustrate, the introduction of a prior murder conviction would be unfairly prejudicial to a defendant charged with murder, as there would be a substantial risk that the jury would convict the defendant on a propensity basis. The Rules do not permit this kind of propensity evidence, and so the conviction would be inadmissible (FRE 404(a)(1), 2013).¹ A prior conviction for assault might even be inadmissible against a murder defendant, as it could be considered propensity evidence for his murder conviction.

But the introduction of certain convictions is mandatory. Rule 609 requires the admission of convictions of crimes involving dishonest acts or false statements, either felony or misdemeanor (FRE 609(a)(2), 2013). Unlike convictions, judges have no discretion in admitting prior convictions involving untruthfulness—the House Committee notes accompanying Rule 609 note that these “convictions are peculiarly probative of credibility and, under this rule, are *always* to be admitted” (H.R. Rep. No. 93-1597, 1974, p. 9).

¹ “Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with that character or trait.”

provided they fall within the ten-year time limit. Unlike the above example of a prior murder conviction being inadmissible in a current murder trial, a prior bribery conviction would be admissible in a current bribery trial, despite its substantial risk of unfair prejudice. Evidence that in theory should be offered merely to demonstrate untrustworthiness would likely be used as propensity evidence or evidence of conformity with prior conduct, which the Rules otherwise bar (FRE 404(a)(1), 2013).

Time Limits on Admissibility

Evidence of prior convictions is admissible unless “10 years have passed since the witness’s conviction or release from confinement from it, whichever is later” (FRE 609(b), 2013). But even the ten-year bar is not absolute; if the probative value of the evidence substantially outweighs its prejudicial effect, evidence of substantially older convictions could be admissible (FRE 609(b)(1)-(2), 2013).

The practical effect of the ten-year time limit is as follows: if a person is convicted of a crime, evidence of that crime may be admitted as impeachment evidence in a trial for the next ten years (FRE 609(b)(1)-(2), 2013). But, if the defendant serves a sixty-year sentence, the ten-year period does not begin to toll until the day he or she is released (FRE 609(b)(1)-(2), 2013). He or she would be exposed to impeachment for seventy years. And though a conviction should be substantially less probative of a person’s present character for truthfulness after long-term incarceration than after short-term incarceration, Rule 609 does not recognize the distinction.

Consequently, if two people are simultaneously convicted of the same crime, but only one is incarcerated, the non-incarcerated person has a substantial benefit. If he or she is a witness in a case ten years and one day later, the conviction will not be admissible. The day the conviction becomes inadmissible against the non-imprisoned convict, nothing changes for his imprisoned counterpart. If he or she is released after one year, he or she will be exposed to eleven years of impeachment by that conviction, just because the Rules deem him or her less trustworthy.

The Burden of Demonstrating Rehabilitation

There are limited situations where a convict can prove rehabilitation, but merely serving a sentence is not sufficient. Rule 609 bars evidence of prior convictions within the ten-year time period if there has been a “finding that the person has been rehabilitated” (FRE 609(c)(1), 2013). Simply put, this burden is not easily overcome, and it is probably impossible that a convict could demonstrate rehabilitation solely through incarceration. To illustrate, the Eighth Circuit Court of Appeals held that payment of a fine and compliance with a probation term did not constitute rehabilitation within the meaning of Rule 609 (*U.S. Xpress Enterprises, Inc. v. J.B. Hunt Transport, Inc.*, 2003, p. 816). Additionally, the Second Circuit Court of Appeals held that a podiatrist who had performed community service, renewed his license to practice, completed continuing education, and even won a Board of Directors election at his synagogue had not been sufficiently rehabilitated within the meaning of 609 to bar the introduction of his prior conviction (*Zinman v. Black and Decker*, 1993, p. 435). If the burden of proving rehabilitation was not met in those cases, it certainly cannot be met by simply serving a mandated sentence, regardless of whether the sentence had an actual rehabilitative effect. And if the purpose of imprisonment is rehabilitation, Rule 609 demonstrates the failure of imprisonment in accomplishing this purpose.

Rule 609 demonstrates that even Congress does not believe that the corrections system can actually correct criminal behavior. The extension of the ten-year time limit to ten years after release from imprisonment suggests that Congress might even believe that imprisonment makes prisoners worse. After all, courts have excluded other forms of punishment within the criminal justice system—like parole or probation—from the definition of “confinement” under Rule 609(b) (*United States v. Rogers*, 2008, p. 198; *United States v. Daniel*, 1992, pp. 167-68). This means that the ten-year period is not extended when a convict is on parole or probation, as courts have found those sufficiently rehabilitative. So, the only thing that will extend the ten-year period, and in effect prolong a convict’s legal status as untrustworthy, is imprisonment.

Moving Forward

The seemingly simple solution to this problem would be to eliminate the extension of the time bar, limiting the admissibility of prior conviction evidence to ten years from the date of conviction without regard to whether the criminal served a prison sentence. However, this solution would not address the underlying issue—the issue of rehabilitation. Admittedly, the purpose of Rule 609 is not to fix the prison system, but if the ten-year time bar reflects the scope of a convict's trustworthiness after conviction, the implication is that over the ten-year period, the convict's character will have been rehabilitated.

So, if the ten-year time bar is applied evenly to all convicts, it is possible that some convicts who served time and were *not* rehabilitated gain a windfall in that their prior convictions would be inadmissible despite their non-rehabilitated character. However, this is more of a failure of the prison system than of the Federal Rules of Evidence. Applying the time bar evenly to all convicts will not ensure that prisoners are rehabilitated—only prisons

themselves can ensure that. But it will ensure that prisoners who serve lengthy sentences and are rehabilitated are not further branded as untrustworthy merely because a few extra years have not passed.

Conclusion

As a result of Rule 609's extension of the ten-year period, witnesses and criminal defendants can be impeached with prior convictions that are potentially substantially remote in both time and circumstance. Nobody can dispute that a safety net is necessary; after a certain length of time, a person's prior convictions are not probative of his or her character for truthfulness and create a substantial risk of prejudice to his or her testimony. And, while drawing a line in the sand for ten-year old convictions may seem arbitrary, extending that line for only some criminals represents an insidious and unjust application of federal lawmaking authority, codifying the implication that departments of correction do not correct.

Griffen Thorne is a third-year law student at Loyola University Chicago School of Law and Editor-in-Chief of the Loyola University Chicago Law Journal.

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