

Incarcerated Motherhood

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Not Who I Planned To Be

*Sometimes in the midst
of here and now
My there and then shows up.
Generations appear in one body.
I listen attentively –
Wondering who will speak up first.*

-Bethany Nelson, client of the William Mitchell Reentry Clinic¹

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¹ Excerpt from Bethany Nelson, *Not Who I Planned To Be*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010, at 4. Bethany is a former client of the Reentry Clinic.

INTRODUCTION

In 2007, William Mitchell College of Law in St. Paul, Minnesota, established the Reentry Clinic.² The primary purpose of the Reentry Clinic is to “assist and empower women as they reenter society after being in state prison.”³ The Law School developed a collaborative team with the Minnesota Department of Corrections and the State Public Defender’s Office to create a clinic in which law students’ work directly with women who are exiting incarceration and re-entering society.⁴ Through the clinic, inmates at this women's correctional facility are matched with certified student attorneys who are tasked with the responsibility of providing clients with limited legal counsel and referrals, when relevant and appropriate, for ancillary services, such as case management.⁵

Unlike most law school clinics, the Reentry Clinic partners with non-lawyers -- namely social workers -- to provide a holistic approach to client needs.⁶ Clinic students not only provide direct legal representation on a host of issues (including family law, housing, and employment law) but also learn about directing women to relevant, effective community resources.⁷ In the short time since William Mitchell College of Law founded the clinic, this integrated model of legal service delivery has proven to have high success rates. According to the founder and director of the Reentry Clinic, Joanna Woolman,

An intentional focus on feminist, race and gender responsive theories was

² The author was a certified student attorney for the Reentry Clinic from 2010 to 2011.

³ The Reentry Clinic, <http://www.thereentryclinic.org/about-us.php> (last visited Nov. 8, 2011); *see also* <http://web.wmitchell.edu/students/course-description/?course=7002>

⁴ *Id.*

⁵ Joanna Woolman, *FROM MARGINALIZATION TO EMPOWERMENT: A GENDER RESPONSIVE CLINIC HELPS WOMEN SUCCESS AFTER PRISON* 12, http://law.ubalt.edu/downloads/law_downloads/Feminist_2010_johncox.pdf. (Joanna Woolman is the Director of the Reentry Clinic).

⁶ The Reentry Clinic, *supra* note 3.

⁷ Kristin Sandness, *Dear Reader*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), August, 2011, at 1.

integrated into the classroom with students, into all case planning, and as part of policy work done by students and clients. These theories were put into practice at varying levels to try to help women succeed upon their release. Women who feel connected to their communities and families after release may be less likely to recidivate.⁸

This article explores how theories about race, gender, and the law are applied within the Clinic. In this article, we define and understand policies affecting incarcerated women from a theoretical perspective. Thereafter, we apply this theoretical knowledge within the practical context of these clients as a means of arriving at a more nuanced set of policy recommendations for incarcerated women who are mothers. Part I explains the unique gendered experience of incarcerated women. Part II explores legal theories of marginalization and oppression and how these theories are instructive in designing legal services for incarcerated women. Part III explains how the Reentry Clinic incorporates these key theories in its service delivery. Part IV considers how the application of theory in the clinical setting results in higher success rates than traditional legal services. In addition, we recommend specific prison policy reform in order to facilitate the successful reentry of incarcerated women.

PART I GENDERED INCARCERATION

In 1991, the Department of Justice released an issue brief, which concisely concluded that

Women offenders have needs different from those of men, stemming in part from their disproportionate victimization from sexual or physical abuse and their responsibility for children. They are also more likely to be addicted to drugs and to have mental illnesses.⁹

The experience of incarceration for most women is qualitatively different than the

⁸ Joanna Woolman, *supra* note 5, at 1.

⁹ Merry Morash, Timothy S. Bynum & Barbara A. Koons, *Women Offenders: Programming Needs and Promising Approaches* 1, NATIONAL INSTITUTE OF JUSTICE RESEARCH IN BRIEF (1998).

experience of incarceration for men. Because there are less women in prison than men, women are infrequently included in studies about the precursors to and results of incarceration.¹⁰ This section considers how the gendered experience of incarceration presents unique problems for women as they leave prison. “Once arrested and placed into the criminal justice system, gender plays a variety of roles in the treatment of individual offenders.”¹¹ Race and class oppression are additional barriers on the lives of incarcerated women. The intersection of race, class, and gender presents unique barriers to successful reintegration.¹² All of these factors play a significant role in reentry. Clinic Director Joanna Woolman refers to this intersectionality when she describes the “bio-psycho-social-legal” needs of the clients.¹³ This section considers how victimization, motherhood, and racism serve as barriers for community reintegration.

A. Statistics

In the last 20 years, incarceration of women in the United States increased by over 800%.¹⁴ This disproportionate growth requires a closer look at the reasons women are incarcerated. Examining social disparities between women and men in the contemporary context helps explain this dramatic increase. The “war on drugs” is sometimes called the “war on women” because the ramped up focus on non-violent drug possession in the 1980s has

¹⁰ See generally MARTIN GUEVARA URBINA, *A COMPREHENSIVE STUDY OF FEMALE OFFENDERS: LIFE BEFORE,, DURING,, AND AFTER INCARCERATION* 3 (Illinois, Charles C. Thomas 2008).

¹¹ Jennifer Ward, *Snapshots: Holistic Images of Female Offenders in the Criminal Justice System*, 30 *FORDHAM URB. L. J.* 723, 734 (2003).

¹² See, e.g., Beth E. Richie, *Challenges Incarcerated Women Face as They Return to Their Communities: Findings From Life History Interviews*, 47 *CRIME & DELINQ.* 371 (2001)(explaining that “...the identical, overwhelming problems women face prior to entering the system meet them when they leave the jail or prison.”)

¹³ Woolman *supra* note 5, at 14.

¹⁴ See generally Heather C. West & William J. Sabol, *Bureau of Justice Statistics Bulletin: Prisoners in 2007* (December 2008)(cited in Women's *Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 4 (, New York, Women's Prison Association May, 2009)) (See also Julie Poehlmann, *New Study Shows Children of Incarcerated Mothers Experience Multiple Challenges* 1, 3 *FAMILY MATTERS: A FAMILY IMPACT SEMINAR NEWSLETTER* (October, 2003).

disproportionately affected women.¹⁵ Women are more likely to be incarcerated for non-violent drug possession or drug trafficking than men.¹⁶

Minnesota is home to only one women's correctional facility, the Minnesota Correctional Facility - Shakopee, which houses about 5% of the overall prison population.¹⁷ Because women make up such a small percentage of the overall inmate population, there are fewer services designed to meet their unique needs.¹⁸ In addition, the majority of incarcerated women are mothers, and typical reentry analysis on male inmates does not account for the unique gendered issues of parenting. This lack of policy evolution is particularly alarming in light of the fact that there has been a sharp increase in the number of incarcerated women since the 1990s.¹⁹

B. History of Victimization

Studies on incarcerated women concluded that a significant percentage of female inmates have a history of victimization, mental health issues, and chemical dependency.²⁰ The majority of incarcerated women in the United States were convicted of non-violent crimes.²¹ Conversely, the majority of the above mentioned convicted women have themselves been the victims of violent acts, most of which were never prosecuted. The irony that victims of violence are

¹⁵ See generally RENNY GOLDEN, *WAR ON THE FAMILY: MOTHERS IN PRISON AND THE FAMILIES THEY LEAVE BEHIND* (2005) (See also Judith Berman, *Women Offender Transition and Reentry 2* (National Institute of Corrections) (n.d.)).

¹⁶ Chieko M. Clarke, *Maternal Justice Restored: Redressing the Ramifications of Mandatory Sentencing Minimums on Women and Their Children*, 50 HOW. L. J. 263, 266 (2006).

¹⁷ Woolman *supra* note 5, at 2.

¹⁸ *Id*

¹⁹ William A.L. Clay, *Hidden Victims of Incarceration: An Insight*, 30 T. MARSHALL L. REV. 423 (2005) (See also Lanette Dalley, *Imprisoned Mothers and Their Children: Their Often Conflicting Legal Rights*, 22 HAMLINE J. PUB. L. & POL'Y 1 (2000)).

²⁰ URBINA, *supra* note 10, at 29.

²¹ STEPHANIE S COVINGTON, *A WOMAN'S JOURNEY HOME: CHALLENGES FOR FEMALE OFFENDERS*, http://www.urban.org/uploadedpdf/410630_FemaleOffenders.pdf (2001) (Covington explains "the proportion of women imprisoned for violent crimes continues to decrease as the proportion of women incarcerated for drug offenses increases.").

incarcerated while their perpetrators roam freely presents unique challenges for female inmates who struggle with lingering memories of trauma. This dynamic can manifest itself in a qualitatively significant amount of hopelessness and despair, which presents significant barriers for successfully reentry.

A significant percentage of female inmates in the United States have a history of trauma, including child sexual abuse, sexual assault, and domestic violence.²² As one group of experts noted, "[w]omen's most common pathways to crime are based on survival of abuse, poverty and substance abuse."²³ Oftentimes, female offenders have lived a lifetime of tragedies, and need help to cope with the memories and legacies of abuse and poverty. Psychological trauma itself can present a significant barrier to successful release. Unresolved PTSD can manifest itself in avoidance behavior -- and a lack of ability to deal productively with stress. Incarcerated women with PTSD have a higher drug relapse rates than incarcerated women without PTSD.²⁴

Incarcerated women experience violence beyond their childhood years. For example, a large majority (79.6%) of women inmates in Wisconsin reported that they were in an abusive relationship with a partner.²⁵ Reentry can be extraordinarily challenging for women who may be in a position of returning to an abusive partner to secure housing or to be reunited with her children. Legal services might be helpful in terms of separating from an abuser, whether through divorce and/or a civil protection order.

²² See, e.g., Cathy McDaniels-Wilson & Joanne Belknap, *The Extensive Sexual Violation and Sexual Abuse Histories of Incarcerated Women*, 14 VIOLENCE AGAINST WOMEN 1090 (2008). Mary E. Gilfus, *From Victims to Survivors to Offenders: Women's Routes of Entry and Immersion into Street Crime*, 4 WOMEN & C. JUST. 63 (1992); Angela M. Moe & Kathleen J. Ferraro, *Criminalized Mothers: The Value and Devaluation of Parenthood from Behind Bars*, 29 IN INSIDE AND OUT: WOMEN, PRISON, AND THERAPY 135-164 (Elaine Leeder ed., 2006).

²³ Barbara Bloom et al, *Gender Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders*, National Institute of Corrections, <http://er.uqam.ca/nobel/k27114/doclucie/genderprison.pdf> (2003) (cited in Berman, supra note 15, at 3).

²⁴ Sheryl Pimlott Kubiak, *The Effects of PTSD on Treatment Adherence, Drug Relapse, and Criminal Recidivism in a Sample of Incarcerated Men and Women*, 14 RES. ON SOCIAL WORK PRACTICE 430 (2004) (Kubiak adds, "[a]ttention to trauma-related disorders among incarcerated women may be pivotal in preventing relapse and as a consequence, recidivism.").

²⁵ URBINA, supra note 10, at 48.

A history of trauma is correlative with two other factors connected to a risk of incarceration and a risk of recidivism: substance abuse and mental health problems.²⁶ A history of trauma is also associated with higher rates of substance abuse.²⁷ It is not surprising that a majority of female offenders struggle with substance abuse.²⁸ Poverty levels often make it difficult to access effective substance abuse treatment services. While many of these women are addicts, for some of them with unresolved PTSD, alcohol and drugs are the only ways of coping with painful memories and the anxiety and terror.

Mental illness is another common occurrence in the lives of incarcerated women.²⁹ Untreated disorders such as depression, bipolar, anxiety, phobias, and delusional disorders often manifest in dysfunctional behavior, which can feed back into criminal behavior. Providing mental health and/or social work services during and after the transition can make a significant impact on recidivism.

C. Motherhood

A woman's isolation from society at large does not so easily dissolve her role identities and their abilities to maintain certain functions related to those roles and which have a direct impact on the lives of others. In the case of women, we are speaking specifically of their roles as mothers.³⁰ In a comprehensive study of women prisoners in Wisconsin, Urbina found that "no

²⁶ See, e.g. Berman *supra* note 15, at 4.

²⁷ STEVE CHRISTIAN, CHILDREN OF INCARCERATED PARENTS, at 7, (2009), <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

²⁸ PATRICIA ALLARD, LIFE SENTENCES: DENYING WELFARE BENEFITS TO WOMEN CONVICTED OF DRUG OFFENSES (2002) (Beth Richie interviewed several incarcerated women of color who also struggle with substance abuse, and several discussed the use of drugs or alcohol to numb the pain *Supra* note 12 at ___).

²⁹ URBINA, *supra* note 10, at 140.

³⁰ Jennifer L. Fiorica, *How the Constitution Can Preserve the Strength of Existing Familial Bonds and Foster New Relationships Between Female Inmates and Their Children*, 29 WOMEN'S RTS. L. REP. 49 (2007).

single issue seems to be more important to [incarcerated] women than their children."³¹

Most mothers—at least 70%³² -- assume primary caregiver roles in their children's lives, and so when mothers are incarcerated, the effects on children are even more profound than those of a father's incarceration.³³ Although variables such as the length of the woman's sentence have a significant impact on the eventual outcomes experienced by their children, as many as 40% of women who are incarcerated and who lived with and were the primary caregivers for their children prior to imprisonment, do not reunite with their children upon their release.³⁴ Many times, these children entered the foster care system while their mothers were incarcerated and their mothers are unable to regain custody.³⁵ Parental rights are often terminated when the only parent is incarcerated.³⁶ Children of incarcerated parents are often moved into foster care quickly, without a court determining whether they have an adult relative who could care for them and is willing to do so. For many women, the experience of losing parental rights is traumatic.³⁷

³¹ URBINA, *supra* note 10, at 83. *See also* Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585 (2006).

³² MARY PATILLO, DAVID WEIMAN & BRUCE WESTERN, *IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION* (2006).

³³ A robust body of research has developed to substantiate the negative consequences of imprisonment with respect to the integrity of their families and, in particular, the social, psychological, and behavioral outcomes for their children. *See, e.g.* Sarah Abramowicz, *Rethinking Parental Incarceration*, 82 U. COLO. L. REV. 793 (2011) (noting that "[w]hen a criminal court sentences a child's parent to incarceration, the court reshapes the child's family just as much as does a family law court issuing an order of custody, adoption, or divorce. But whereas a family law court often makes children's interests paramount, a criminal law court may overlook altogether how its sentencing decision will affect a defendant's children.") (*See also* Chesa Boudin, *Children of Incarcerated Parents: The Child's Constitutional Right to the Family Relationship*, 101 J. CRIM. L. & CRIMINOLOGY 77 (2011)).

³⁴ Christian, *supra* note 27 at ___

³⁵ *Id.* at 5. (Statistics reflect the fact that the children of incarcerated adults are more likely than their peers to be involved in the criminal justice and legal systems themselves as they move toward adolescence and adulthood.) (*See, e.g.* Philip M. Genty, *Damage to Family Relationships as Collateral Consequence of Parental Incarceration*, 30 FORDHAM URB. L. J. 1671 (2003)) (Rachel D Costa, *Now I Lay Me Down to Sleep: A Look at Overnight Visitation Rights Available to Incarcerated Mothers*, 29 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 67 (2003)) (As Krisberg and Temin concluded, "[T]he children of incarcerated parents [especially those whose mothers are in prison] show much higher rates of subsequent criminal behavior and incarceration.") (Krisberg & Temin, *infra* note 38 at ___) (The implication, then, is the establishment of patterns of inter-generational suffering).

³⁶ Tiffany Conway & Rutledge Q. Hutson, *Parental Incarceration: How to Avoid a "Death Sentence" for Families*, 41 J. POVERTY L. & POL'Y 212 (2007).

³⁷ URBINA, *supra* note 10, at 86.

In addition to the obvious emotional and psychological effects this has on the child, the mother herself is further traumatized significantly affecting her ability to care for her child. Even if numbers are not available to substantiate the claim, the inability for women to recover their children and rebuild their families and lives once they completed their sentences and are released from prison effects women's recidivism rates. a³⁸ Thusly, visitation and custody are primary concerns for incarcerated women. Policies that affect incarcerated parents and their children, as well as the ability to maintain their relationships, have seen “little or no improvement” in recent decades, even as the number of men and women who are incarcerated has grown.³⁹

Productive reentry services would include the facilitation of mother-child visitation as well as reunification post release. Unfortunately, current policies and a lack of competent legal representation make these services difficult to attain.

1. Visitation

Barry Krisberg and Carolyn Engel Temin state that, “the majority of children have never had a personal visit with their incarcerated parent after prison admission....”⁴⁰ The main reasons why children do not visit incarcerated parents are because of structural barriers, such as geographical distance,⁴¹ and a lack of reliable transportation to be able to travel to and from the prison.⁴²

Even if children are provided with transportation, they often encounter punitive,

³⁸ Margaret E. Finzen, *Systems of Oppression: The Collateral Consequences of Incarceration and Their Effects on Black Communities*, 12 GEO. J. ON POVERTY L. & POL'Y 299 (2005).

³⁹ Barry A Krisberg & Carolyn Engel Temin, *The Plight of Children Whose Parents Are in Prison*, NCCD FOCUS (2001), <http://www.policyarchive.org/handle/10207/bitstreams/5909.pdf>.

⁴⁰ Krisberg & Temin, *supra* note 39 at 185.

⁴¹ *Id.* at 186. (“Most parents are confined in facilities that are more than 100 miles from their last place of residence.”).

⁴² *Id.* (See also Johnna Christian, *Riding the Bus: Barriers to Prison Visitation and Family Management Strategies*, 21 J. CONTEMP. CRIM. JUST. 31 (2005)).

restrictive policies at the prison itself. Such illogical policies and procedures are substantiated by other researchers and public policy advocates.⁴³ The contentious policies affecting the children of incarcerated parents range from: being subjected to “strip searches and body cavity inspections” [even in infants]; a lack of supportive care in those cases when an incarcerated individual being visited needs to talk with other adults about complex financial and legal matters related to her case; a lack of transportation and other resources to even make visiting the incarcerated parent possible; the lack of support from a trained professional such as a social worker, to help explain and discuss difficult issues related to the parent's incarceration and her absence from daily family life; and a lack of services and resources to provide for the child's academic and familial well-being at home, such as ensuring that the child attends school, has a supportive adult in the home, and eats regularly.⁴⁴

2. Custody

Many mothers feel helpless when they are separated from their children due to incarceration. Most of the time, children are placed with a relative. However, women who are incarcerated for an extended period risk permanently losing custody of their children. Berman explains

Incarcerated women stand to lose their parental rights if they do not stay abreast of child welfare actions that require regular contact between a parent and a child placed in foster care. At the same time, very few correctional institutions maintain relationships with child welfare agencies that would facilitate the sharing of information with inmates, and inmate participation in relevant proceedings.⁴⁵

⁴³ Beth M. Huebner & Regan Gustafson, *The Effect of Maternal Incarceration on Adult Offspring Involvement in the Criminal Justice System*, 35 J. CRIM. JUST. 283-296 (2007) (See also Boudin, *supra* note 33 at 77).

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⁴⁵ Berman, *supra* note 15, at 4-5.

Competent legal representation can make the difference between terminated parental rights and visitation or full restoration of custody. The failure to establish clear plans for reunification can make transition from incarceration more difficult.

D. Race and class

Women of color are disproportionately impacted by the experience of incarceration.⁴⁶ The typical female inmate is a woman of color in her thirties with at least one child.⁴⁷ The history of racial discrimination in the criminal justice system is well-documented.⁴⁸

In addition, poverty plays a significant role in the lives of incarcerated women, which compounds the complications of facilitating a productive reentry experience. Rachel Costa writes, "[s]ince incarceration commonly occurs in lower levels of society, the families with the fewest means are the ones forced to cope with such a difficult situation."⁴⁹ Because of the ongoing discrimination faced by women of color, particularly poor women, the likelihood of successful reintegration is lower.

PART II. THEORIES OF OPPRESSION

Exploring nuanced theories is necessitated in the context of incarcerated women because "existing legal paradigms under U.S., foreign, and international law have permitted women of

⁴⁶ Antoinette Greenaway, *When Neutral Policies Aren't So Neutral*, 17 NAT'L BLACK L.J. 247 (2003). See also URBINA, *supra* note 10, at 32 (concluding that women of color are overrepresented in the prison population in Wisconsin). See also Richie, *supra* note 12 at ____.

⁴⁷ Costa, *supra* note 35 at 29.

⁴⁸ See, e.g., FILL IN.

⁴⁹ Costa, *supra* note 35 at ____.

color to fall through the cracks - becoming literally and figuratively voiceless and invisible."⁵⁰ Because mainstream legal philosophy overlooks incarcerated women, implementing different theoretical perspectives provides different vantage points from which to assess the efficacy of the status quo. Theory is further helpful in developing practical prescriptive policy recommendations because the answers to some of the difficult questions about recidivism are not answerable using standard Western legal theory.

A. Incarceration

One of the defining characteristics of the prison system is the fact that what occurs behind the institutional gates of a prison is largely hidden.⁵¹ Furthermore, what occurs behind prison walls is typically disconnected from the realities and needs of the lives of incarcerated people and their families. While this is true of all prison environments, the sequel of this phenomenon of invisibility with respect to women's prisons is that because so few people know what happens inside these institutions, there are few people who can understand what issues affect incarcerated women, much less advocate for them.⁵²

If imprisonment were to be described by two features, it would be removal and marginalization.⁵³ The individual who is imprisoned is physically removed from his or her home environment, which is comprised of social relationships, contacts, and functions—however maladaptive these may be—and is isolated from these markers of identity. Although the newly incarcerated person is surrounded by many other people, in most instances, the common

⁵⁰ Adrienne Katherine Wing, *Global Critical Race Feminism for the Twenty-First Century*, in *Global Critical Race Feminism: An International Reader 2* (Ed. Adrienne Katherine Wing)(2000).

⁵¹ MICHEL FOUCAULT, *DISCIPLINE & PUNISH: THE BIRTH OF THE PRISON* (Allen Lane Penguin Books Ltd. 1977)

⁵² Sally Day, *Mothers in Prison: How the Adoption and Safe Families Act of 1997 Threatens Parental Rights*, 20 WIS. WOMEN'S L. J. 217 (2005).

⁵³ JEREMY TRAVIS & MICHELLE WAUL, *PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES* (2003).

description of entering prison reflects just how totalizing the sense of isolation: “I often feel alone,” wrote Clare Hanrahan in her prison memoir.⁵⁴ The false society of prison—a society comprised of only two roles: prisoners and guards—may be densely populated, but the prison literature, both academic and anecdotal, speaks to a profound sense of enforced aloneness.⁵⁵

Beyond the enforced aloneness that is characteristic of prison life, one of the well-documented consequences of being imprisoned is the process by which “[f]ormer identities become meaningless and new labels become relevant.”⁵⁶ An individual who is incarcerated takes on the label of “criminal,” or, more innocuously, “convict,” “inmate,” or “prisoner.” As this occurs, an incarcerated individual is given a secondary label defined by the nature of the crime committed: murderer, drug trafficker, prostitute, and etcetera. What happens when this singular, reductive label is applied to the inmate—coupled with her removal from society-- is the alienation from his or her other aspects of identity, including the roles that he or she plays within the context of society, as well as within smaller socio-cultural networks, including the family. For female inmates, one of the primary effects of this labeling process—which often occurs unconsciously on the part of all parties involved—is that she becomes stripped of her label as “mother.”

In *Discipline and Punish*, his seminal work on the history, function, and psychology of incarceration, the philosopher and sociologist Michel Foucault explained that the phenomenon of incarceration in the “developed” world arose out of a need to advance the perception that countries like the United States were “civilized.”⁵⁷ Initially, individuals ‘meted out’ punishment

⁵⁴ CLARE HANRAHAN, *CONSCIENCE & CONSEQUENCE: A PRISON MEMOIR* 12 (2005).

⁵⁵ See, e.g., Stormy Ogden, *Prisoner W-20170/Other*, in *SHARING OUR STORIES OF SURVIVAL* (Sarah Deer, et al ed.) (2008) at 149 (stating that “All women in prison are fighting to maintain a sense of self with a system that isolates, degrades, and punishes.”)

⁵⁶ DAVID WARD & GENE KASSEBAUM, *WOMEN’S PRISON: SEX AND SOCIAL STRUCTURE* 9 (2007).

⁵⁷ FOUCAULT, *Supra* note 51 at 232.

in a dramatically public way; a “spectacle” in Foucault’s words, and one intended to discourage social and moral disorder by demonstrating in violent fashion how deviancy would be addressed. For example, the burning of suspected witches was such a spectacle in colonial America,⁵⁸ as was public flogging.⁵⁹ In the less distant past, public lynchings were the modern equivalent of the punishment spectacle, staged—quite literally—for all to see.⁶⁰

The public was encouraged to attend these events, which were promoted almost as a form of entertainment.⁶¹ The scene that Wood described in this anecdote about a double lynching of two black men accused of murder in Starkville, Mississippi in 1915 is chilling; however, it is by no means an anomalous tale.

[T]he gallows... was erected in a pasture encircled by bluffs, creating a 'natural amphitheatre' that provided the 5,000 'on-lookers an excellent view.'... [V]endors sold pop and snacks, and many spectators brought their lunches, 'making it a picnic.'⁶²

In early twentieth century America, such scenes of “hanging day as circus” were actually commonplace.⁶³ People seeking weekend diversion would come from surrounding counties by train or buggy to witness lynchings.⁶⁴ Vendors looked forward to lynchings and other public spectacles, as they were always sure to make money.⁶⁵ Perhaps more disturbing, onlookers frequently “rushed the gallows for souvenirs”.⁶⁶ For example, the rope that hung Will Mack in Brandon, Mississippi in 1909 was cut into pieces by onlookers fighting for a memento of the day

⁵⁸ WOLFGANG BEHRINGER, *WITCHES AND WITCH-HUNTS: A GLOBAL HISTORY* (2004).

⁵⁹ Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880 (1991).

⁶⁰ James W. Clarke, *Without Fear or Shame: Lynching, Capital Punishment and the Subculture of Violence in the American South*, 28 BRITISH J. POL. SCIENCE 269, 271 (1998).

⁶¹ AMY LOUISE WOOD, *LYNCHING AND SPECTACLE: WITNESSING RACIAL VIOLENCE IN AMERICA, 1890-1940* (2011).

⁶² *Id.* at 31.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 30.

they could call their own and take home.⁶⁷ Such souvenir scavenging was commonplace, and vendors also sold photos and postcards as souvenirs that could confirm the onlooker was actually present at the event.⁶⁸ Dora Apel writes that lynching postcards often became collectors' items that would sell for years after the event itself.⁶⁹ Sideshows and other circus and fair-like attractions were often featured before and after such executions, reinforcing the entertainment aspect of the public spectacle, suggesting that witnesses could enjoy the fun things in life... or they could die a gruesome death if they chose the wrong path.⁷⁰ For punishments that did not result in death, exceptional public shaming was an important means of discouraging social deviance;⁷¹ for those punishments that did result in death, such as lynchings, the message was clear: Violate social norms at your own risk.

Not surprisingly, such public spectacles were highly effective with respect to maintaining law and order, particularly in a society that did not yet have all the institutions and infrastructure characteristic of contemporary legal and justice systems. Ministers of churches in communities where such spectacles occurred often crafted their sermons around the imagined life narrative of the punished individual, using his or her life and alleged misdeeds as a cautionary morality tale.⁷² Indeed, church clergy often played a critical role in defining, monitoring, and sanctioning social morality and behavior, frequently with the full support of police and local governments.⁷³ Local law enforcement agents would collaborate with ministers to display the bodies of those executed as a “socially necessary admonition.”⁷⁴

Nevertheless, the public spectacle eventually posed a troubling problem: the gross,

⁶⁷ *Id.*

⁶⁸ See Dora Apel, *IMAGERY OF LYNCHING: BLACK MEN, WHITE WOMEN, AND THE MOB*, at 7 (2004).

⁶⁹ *Id.*

⁷⁰ See Wood, *supra* note 60, at 31.

⁷¹ See Massaro, *supra* note 58, at 1918.

⁷² Apel, *supra* note 62, at ____.

⁷³ *Id.*

⁷⁴ Wood, *supra* note 60, at 35.

exaggerated violence of public punishment seemed to contradict the very image that developing societies wished to portray of themselves as orderly, progressive, healthy, and peaceful. Increasingly, governments that allowed—indeed, facilitated and sanctioned—the spectacle, were called into question:⁷⁵ How could a society that effectively tortured people publicly—even criminals—consider itself civilized?

The question posed a serious conundrum, and so, as Foucault explained, the paradigm for effective punishment shifted completely. Gone was the public spectacle, replaced by a system of isolation in which the violators of law and social order would be removed from society altogether, beyond the view of the public.⁷⁶ The spectacle was over. The troubling consequences of punishment, however, were only just beginning.

Under this new system of punishment, taking prisoners out of the public's sight genuinely ushered in an out of mind mentality. With social order maintained, for the most part, through the recently implemented institutions, like courts, relatively few people other than those affected directly by incarceration had any idea at all what the experience of punishment was like. Still fewer people, perhaps, had any understanding of what the consequences of incarceration and its relative invisibility would be for those not incarcerated but affected by the phenomenon, nonetheless, among them, children and, in particular, the children of incarcerated women. It is only those individuals who have access to prisons who begin to understand some of the deleterious social consequences that may be fostered by the very system that wants to prevent social problems.

The fact that the consequences of incarceration are not a public spectacle, appropriating Foucault's language, means that they generate little interest beyond the walls of the prison. And

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⁷⁶ See Foucault, *supra* note 50.

within the walls of the prison, of course, the social order is established and maintained in such a way that the women themselves cannot exercise much agency to advocate for themselves because one of the features of prison life is that incarcerated individuals have access to as little agency and autonomous decision making as possible.

B. Feminist Legal Theory

Feminist legal theory is designed to consider how legal systems account for difference between men and women.⁷⁷ In the context of reentry legal services for women, feminist legal theory can help illuminate unique gendered issues in all phases of incarceration (precursors, prison conditions, and release challenges).⁷⁸ Centering gender in the analysis provides new insight.— in the context of the massive increased of incarcerated women, Clay writes that "the single most compelling argument fueling this steady and sky-rocketing growth focuses primarily on the female's disadvantaged economic and societal position."⁷⁹

Feminist theory also allows for incorporation of some psychological studies that link abuse and victimization to later criminal behavior, with an emphasis on the female experience. Most women in prison have a history of abuse, and some theorists posited that being socialized to accept abuse and mistreatment sets the foundation for self-destructive behavior.⁸⁰ For example, some young women have fled abuse at home only to find themselves vulnerable on the streets. There is a strong correlation between abuse and delinquency. Compounding this

⁷⁷ See generally Catharine A. MacKinnon, *TOWARD A FEMINIST THEORY OF THE STATE* (1991).

⁷⁸ See generally Stefanie Fleischer Seldin, *A Strategy for Advocacy on Behalf of Women Offenders*, 5 COLUM. J. GENDER & L. (1995).

⁷⁹ William A.L. Clay, *Hidden Victims of Incarceration: An Insight*, 30 T. MARSHALL L. REV. 423, 424 (2005).

⁸⁰ URBINA, *supra* note 10., at 42.

problem is the fact that, for many incarcerated women, violence continues inside prison.⁸¹

Feminist theory is also helpful in considering the unique issues that women face when leaving prison, such as job training and safe housing.

C. Critical Race Feminism

Without including an analysis of racism, ethnic bias, and poverty, our discussion of “gender-specific” is meaningless. “Meanings, enactment, and expectations of ideals of femininity and masculinity vary in and across African American, Puerto Rican, Mexican American, Korean, Vietnamese, Japanese, Chinese American, middle-class and low-income families and communities.”⁸²

Critical race feminists argue that mainstream feminist theory has neglected Black women’s and other women of color’s realities of racism, sexism and classism, and White women’s role in this oppression. As a result of this neglect, Black feminists and other feminists of color, reacted to this vacuum by pioneering a new genre known as “Critical Race Feminism”, an off-shoot of Critical Race Theory which originated with Black and other scholars of color who felt that existing legal discourse including the Critical Legal Studies discourse was alienating to all people of color.⁸³

In the context of women, Kimberle Crenshaw's scholarship on intersectionality has addressed the complex relationship between gender and race.⁸⁴ One of the best essays that

⁸¹ Luana Ross, INVENTING THE SAVAGE: THE SOCIAL CONSTRUCTION OF NATIVE AMERICAN CRIMINALITY 6 (1998) (“the violence experienced by women prior incarceration continues inside the prison in a variety of forms including sexual intimidation, the overuse of mind-altering drugs, lengthy stays in lockup, and the denial of cultural activities for Native Americans.”).

⁸² See Laurie Schaffner, *Beyond Gender-Specific Intervention: Theory-Driven Praxis*, Women and Prison, http://womenandprison.org/contributors/view/laurie_schaffner (last visited August 31, 2012).

⁸³ See generally Kathleen Cleaver, *Racism, Civil Rights, and Feminism*, in Adrienne Katherine Wing (2d ed.), CRITICAL RACE FEMINISM: A READER. (2003).

⁸⁴ See Kimberle Crenshaw, Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color, 43 STAN. L. REV. 1241, 1245 (1991).

explains how gender is racialized is Dorothy E. Roberts' article, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Rights of Privacy*.⁸⁵ Her analysis presumes that Black women experience various forms of oppression simultaneously, as a complex interaction of race, gender, and class that is more than the sum of its parts. She writes:

It is impossible to isolate any one of the components of this oppression or to separate the experiences that are attributable to one component from experiences attributable to the others. The prosecution of drug-addicted mothers cannot be explained simply as an issue of gender inequality. Poor Black women have been selected for punishment as a result of an inseparable combination of their gender, race, and economic status. Their devaluation as mothers, which underlies the prosecutions, has its roots in the unique experience of slavery and has been perpetuated by complex social forces.⁸⁶

Clinic Director Joanna Woolman writes that racism is a significant problem for women of color who are incarcerated in Minnesota.⁸⁷ Racism aggravates the isolation of incarceration, which in turn can increase the sense of disconnectedness with community.⁸⁸

D. Gender Responsive Clinical Theory

The last theory we consider is not a legal theory at all – but rather a social work theory designed specifically to deal with incarcerated women. Here, we are interested in how the clinical legal experience interfaces with social work theory. Assessment, treatment, and programming for incarcerated people have traditionally focused solely on men.⁸⁹ In the 1990s, a new approach that encompasses gendered concerns began to find footing in the criminal justice system. This new approach “operates from the assumption that women in the criminal justice

⁸⁵ Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, in Adrienne Katherine Wing (2d ed.), *CRITICAL RACE FEMINISM: A READER* 167 (2003).

⁸⁶ *Id.* at 168.

⁸⁷ See Woolman, *supra* note 5, at 2.

⁸⁸ See generally Geneva Brown, *The Wind Cries Mary - The Intersectionality of Race, Gender, and Reentry: Challenges for African-American Women*, 24 ST. JOHN'S J. LEGAL COMMENT 625 (2010).

⁸⁹ See Berman, *supra* note 15, at 11-12; See also Rachel Kitze, *Interview with Jane Johncox Hurley*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010 at 6.

system represent a population that is marginalized by race, class, and gender.”⁹⁰ Covington and Bloom provide a definition of gender responsive programming:

Gender responsive means creating an environment through site selection, staff selection, program development, content, and material that reflects an understanding of the realities of women’s lives and addresses the issues of the participants. Gender-responsive approaches are multidimensional and are based in theoretical perspectives that acknowledge women’s pathways into the criminal justice system. These approaches address social (e.g. poverty, race class, and gender inequality) and cultural factors, as well as therapeutic interventions. These interventions address issues such as abuse, violence, family relationships, substance abuse, and co-occurring disorders. They provide a strength based approach to treatment and skill building. The emphasis is on self-efficacy.⁹¹

At its core, the theory behind the gender-responsive approach starts with an understanding that “public policy has ignored the context of women’s lives and that women offenders have disproportionately suffered from the impact of ill-informed public policy.”⁹² Social and legal barriers to successful community reintegration include ineligibility for welfare benefits, educational assistance, food stamps, and public housing.⁹³ A failure to address these barriers with a woman decreases the likelihood that her integration will succeed, and lays the foundation for re-incarceration.⁹⁴

PART III. The Reentry Clinic’s Application of Theory

Most female inmates in the United States are eventually released. Thus, the failure to develop a formalized "reentry" plan is its own form of reentry plan - one that is too often destined for failure.⁹⁵ Spjeldnes & Goodkind explain how reentry success is typically measured:

⁹⁰ Woolman, *supra* note 5, at 13.

⁹¹ Covington et al., *supra* note 23 at 16.

⁹² Barbara Bloom et al., *Women Offenders and the Gendered Effects of Public Policy*, 21 REV. POL’Y RES. 31, 31 (2004)

⁹³ See Woolman, *supra* note 5, at 2; See also Allard, *supra* note 27, at 1.

⁹⁴ See Brown, *supra* note 87, at 639.

⁹⁵ Urbina, *supra* note 10, at 189 (stating that "life after prison is more a reflection of "back to survival days," than it is of "community (re)integration.").

For society, successful reintegration is measured by recidivism rates and public safety. For the offenders and their families, successful reintegration is measured by levels of stability with family, social activities, mental and physical health, and employment.⁹⁶

The goal of legal services for incarcerated mothers should be to restore the fullness and diversity of the incarcerated person's roles. Yes, the individual who has been deemed guilty of committing a crime must be punished, and punishment, in many cases, must be delivered within the setting of a contained, controlled environment. The Reentry Clinic is a model of collaborative legal services is an application of the insights garnered from feminist legal theory, critical race theory, and gender responsive clinical theory.

A. Direct Services

Judith Berman for the National Institute of Corrections writes that, "Perhaps one of the greatest challenges for correctional professionals and institutions is understanding and implementing strategies that address [women's] entire complex of issues simultaneously rather than considering them independently or sequentially."⁹⁷

At the William Mitchell Reentry Clinic, clients are referred to the clinic while they are still incarcerated. Women fill out requests for representation after meeting with the Clinic Director in the Transitions Class at the facility. Using a gender-specific risk assessment called "Women's Risk/Needs Assessment Interview and Survey" the Clinic considers a plan of action for each individual woman.⁹⁸ The Clinic gives each client the opportunity to engage in self-assessment and consider their own perception of self-efficacy, parenting skills, and abuse history. Feedback is provided in the context of a supportive environment. A psycho-educational group program

⁹⁶ Solveig Spjeldnes & Sara Goodkind, *Gender Differences and Offender Reentry: A Review of the Literature*, 48 J. OFFENDER REHABILITATION 314-335 (2009).

⁹⁷ Berman, *supra* note 15, at 10.

⁹⁸ See Woolman, *supra* note 5, at 11 (the assessment tool was developed by Dr. Patricia Van Voorhis at the University of Cincinnati's Corrections Institute).

using Covington's "Helping Women Recover" curriculum is a central component of this support. Director Joanna Woolman describes this approach as a "hybrid model combining law and social work."⁹⁹

The Director assigns certified law students to work on between three and five cases.¹⁰⁰ Students travel to the Shakopee Correctional Facility to meet directly with their clients before they are released.¹⁰¹ Depending on the needs of an individual client, the representation can include court appearances, legal research, court filings, and negotiations. A bulk of the services includes family law. In one case, a student was able to secure compensatory parenting time for a woman who had served time for a minor drug offense. The woman's experience was empowering for her even beyond the legal victory. Of her student attorney and the Clinic Director, she said "They were very encouraging; they gave me hope....They never backed down. They are two of the greatest women I've ever worked with."¹⁰² Overall, the Clinic has helped more than 30 women reunite with their children.

Working in partnership with a social worker is a key component of the Clinic.¹⁰³ The Clinic provides clients with individual and group therapy to address personal issues.¹⁰⁴ The practice of social work for incarcerated women includes preparing them to deal with some of the social challenges they will face upon release. One of the women said of her social worker, "[She] has given me the tools I need to help me in my everyday life. She is experienced, and

⁹⁹ Joanna Woolman, *Letter from the Director*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), August 2011 at 2.

¹⁰⁰ Woolman *supra* note 5, at 12.

¹⁰¹ Rachel Kitze, *Interview with Jackie Marceau*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010 at 6.

¹⁰² William Mitchell Staff, *Real Experiences; Real Impact: Mitchell Student Helps a Mother Regain Visitation Rights*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010 at 1.

¹⁰³ Rachel Kitze, *Interview with Jane Johncox Hurley*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010 at 5.

¹⁰⁴ The Reentry Clinic, *About Us*, <http://www.thereentryclinic.org/about-us.php> (last visited Nov. 8, 2011).

everything she does to help us is filtered through love and concern.”¹⁰⁵ A pre-law intern expressed her exposure to this collaborative process:

A client doesn't simply present a problem and a solution to be meted out by the law but rather a person with a unique background and situation who deserves to be heard and to be understood...They care for the individual and the community building are what bind this network of people together, and as the Clinic continues to reach out I would imagine that this community will only grow and strengthen.¹⁰⁶

B. Policy Reform

An important component of the Reentry Clinic involves the efforts to address racism and sexism in a systemic way by advocating for policy reform, which would better facilitate reentry for women inmates. The Reentry Newsletter includes state and federal legislative updates that could affect ex-offenders in Minnesota.¹⁰⁷ Staff and students are involved in assessing these bills and determining whether the status of their clients would be improved by legislation.¹⁰⁸ In this way, the Reentry Clinic is engaged in both personal and social change for incarcerated women.

PART IV: THE SUCCESS OF THE REENTRY CLINIC

*No matter what life brings you, there is always someone to help you through. There are people who can help you move forward, who can be strong and support you through the wreckage of your past.*¹⁰⁹

Sharon Kennedy, client of the Reentry Clinic.

Interdisciplinary collaboration between lawyers and social service providers is still

¹⁰⁵ Sharon Kennedy, *Interview*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010 at 3.

¹⁰⁶ Sandness, *supra* note 7, at 1.

¹⁰⁷ See, e.g., The Reentry Clinic, *Bills of Interest - Minnesota Legislative Session 2011-2012*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), August 2011 at 7.

¹⁰⁸ See Woolman, *supra* note 5, at 13.

¹⁰⁹ Rachel Kitze, *Interview with Sharon Kennedy*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), Summer 2010 at 3.

somewhat rare.¹¹⁰ Most non-legal re-entry literature rarely mentions legal services as part of a holistic plan.¹¹¹ This is typical of the traditional strict division between legal services and social services. A truly client-centered perspective provides the "hybrid" set of services such as those provided by the Clinic. Lawyers are often in the best position to advocate for a collaborative approach by providing key legal services. A social worker cannot provide legal advice. For example, she cannot answer technical legal questions about expungement.

Likewise, attorneys are not trained psychotherapists, and are not trained to provide skillful mental health interventions or substance abuse treatment. Social workers are trained to be adept at navigating social services agencies and providing transitional services such as support groups, substance abuse treatment, and mental health services. A hybrid model allows the clients of The Reentry Clinic to work with both lawyer and social workers, which provides more safety net coverage to prevent recidivism and help the women put their life back together.

Providing sensitive intervention for mental health issues is crucial for providing holistic reentry services.¹¹² An inmate, for example, who works with a lawyer to build a workable visitation agreement, but receives no help for the abuse she suffered as a child may be less likely to meet her obligations so that her visitation is protected. This can be frustrating for the lawyer, but even more importantly, it sets the newly-released woman up for failure.

Another example is a common narrative of women who re-offend -- the inability to secure stable employment and/or seek education. There is a reciprocal (cyclical) relationship between unemployment and crime.¹¹³ Criminal history presents a significant barrier to

¹¹⁰ See Stacy Brustin, *Legal Services Provision Through Multidisciplinary Practice - Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787, 788-789 (2002).

¹¹¹ See, e.g.,

¹¹² See generally Susan W. McCampbell, *Gender-Responsive Strategies for Women Offenders*, National Institute of Corrections (2005).

¹¹³ Monique W. Morris, Michael Sumner & Jessica Z. Borja, *A HIGHER HURDLE: BARRIERS TO EMPLOYMENT FOR FORMERLY INCARCERATED WOMEN* (2008).

employment, and lawyers can be instrumental in overcoming this barrier through expungement motions and other services.¹¹⁴ Again, a collaborative effort between legal and social services can be key. A combination of employment law and job coaching, for example, can provide two layers of protection against recidivism.

Another important benefit to the direct services component is the learning opportunity for law students. Because the Clinic is located in a law school, students have an opportunity to directly represent clients. The students gain a great deal of understanding about client-legal practice by working directly with women in transition. One student reports that her clinical experience allowed her to feel "more connected to her clients" so that the "level of emotion was that much stronger" in her advocacy work.¹¹⁵ Another student reports that she understands "just how powerful attorneys are and how [attorneys] can use that power to help people and really make a difference in their lives."¹¹⁶ The social worker also provides regular consultation for clinic students, where she can help them understand some of the psychological and social issues they are encountering with their clients.¹¹⁷ Because working with incarcerated women can be challenging, students have the opportunity to validate and support one another.

PART V: RECOMMENDATIONS

The policies in effect at many jails and prisons, whether local, state, or federal, are illogical, impractical, and even potentially violation of human rights.¹¹⁸ Here, we explore two important policies that can be considered by correctional facilities. In addition, legislative

¹¹⁴ *Id.*

¹¹⁵ Andrea Domaskin, *Transitions: Forging Professional Identity*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), August 2011 at 4.

¹¹⁶ Joy Johnson, *Transitions: Connecting History to Advocacy*, TRANSITIONS (The Reentry Clinic, St. Paul, MN), August 2011 at 5.

¹¹⁷ Rachel Kitze, *Interview with Jane Johncox Hurley*, *supra* note 102, at 5.

¹¹⁸ Krisberg et al., *supra* note 38.

reform may be helpful in facilitating such reforms, which will enhance the possibility of successful transition.

Often, and understandably, prison officials and staff views themselves as individuals who are charged with the responsibility of enforcing legal decisions imposed by other stakeholders. This is, in fact, their primary duty. Within the context of that responsibility, however, is the exciting possibility that prison administrators can work with other stakeholders to help prevent recidivism and even initial incarceration by engaging in policy planning for broader social change and for holistic service provision upon re-entry. On the most practical level, what this means is combating institutionalized racism and other forms of discrimination and socioeconomic marginalization that often lead women to commit acts that lead to criminal justice system involvement. By advocating for policies—whether through lobbying or voting—that support equal access to opportunities and resources, prison administrators are acknowledging the need to work systemically to prevent the kinds of crimes that lead to incarceration in the first place.

A. Visitation Policies

Given the significant connection between motherhood and the experiences of most incarcerated women, it is worth encouraging on female correctional facilities to carefully review any regulations that make it difficult (or impossible) for children to visit their mothers.¹¹⁹

Martin Urbina argues that a poor visitation network is a "continuation of the very same problem that we are trying to solve: the cycle of deviance and crime."¹²⁰ Revising visitation policies to be friendlier and more functional for all stakeholders (including prison staff) would

¹¹⁹ See Heidi Rosenberg, *California's Incarcerated Mothers: Legal Roadblocks to Reunification*, 30 GOLDEN GATE U. L. REV. 285 (2000).

¹²⁰ Urbina, *supra* note 10, at 169.

likely have a positive impact on mothers.

Reentry Clinic lawyers can encourage prison administrators to reconsider whether visitation policies actually fulfill their articulated mission, which, in the case of the Shakopee Correctional Facility, is to serve “as an avenue to develop and maintain healthy family and community relationships.”¹²¹ The visiting regulations that set forth guidelines for child visitors are quite stringent and are unlikely to be able to be carried out by any adults who have the means to bring a child for a visit; this seems particularly true for children from communities and families that are marginalized socioeconomically. A birth certificate must be presented and a document certified by a notary public must be provided by the guardian who has assumed responsibility for the child. Pat searches are authorized and the visitor information does not specify whether any age limits are imposed to protect minors from pat or cavity searches. In addition to these policies, the actual nature of contact is strictly prescribed within Shakopee's rules; again, the policies do not reflect best practices.

Finally, there is no provision in the guidelines and regulations regarding any resources that can be sought by an adult who wants to bring a child to visit an incarcerated mother. Though it is not the responsibility of the prison to provide this information, listing existing resources would certainly impose no burden, financial or otherwise, for Shakopee Correctional Facility.

B. Re-Entry Planning Policies

Currently, women who are incarcerated in Minnesota are not eligible for low-income state-funded legal services.¹²² The Reentry Clinic is the only free gender-based clinic available to incarcerated women in Minnesota, and its resources and staffing are limited. Therefore, most

¹²¹ Minnesota Department of Corrections, Inmate visiting, <http://www.doc.state.mn.us/offenders/visiting> (last visited Aug. 31 2012).

¹²² Woolman, *supra* note __ at 5.S

incarcerated women in Minnesota do not have civil legal representation. Expanding the eligibility of legal aid would begin to fill this gap. Admittedly, increasing access to attorneys would require additional resources for legal aid programs, but policy makers should consider the potential cost-savings of preventing recidivism.

In addition to visitation policies, prison administrators should work within their budgetary constraints and their available resources to communicate and collaborate with other stakeholders in order to improve re-entry planning, particularly when it involves parents.¹²³ Affording soon-to-be released inmates with the support to seek housing and employment, if necessary, will facilitate smooth reconnection with families that have been temporarily broken or disrupted by the mother's incarceration.¹²⁴ Providing women with resources to help them gain meaningful employment and to secure housing and other resources (such as insurance, child care, and psychological and/or family counseling) are paramount to successful re-entry and minimizing risks of recidivism. For example, offering a post-release drug program to women leaving prison is one effective method of lowering recidivism.¹²⁵

CONCLUSION

I call this the 'School of Angels'.¹²⁶

-Carolyn Russell, client of the Reentry Clinic

Ultimately, crime is inevitable. Even Foucault (1995) acknowledged that it is a feature of

¹²³ See, e.g., Anne Dannerbeck, *Forces of Separation Among Families Impacted by Incarceration*, 2004 J. INST. JUST.& INT'L STUDIES 139, 139 (noting that "poor communication among criminal justice, child welfare agencies, and other social service systems has hidden patterns of risks and needs among affected families who interact with these [incarceration] systems.")

¹²⁴ Fiorica, *supra note* __ at 49.

¹²⁵ Nicholas Freudenberg et al., *Linking women in jail to community services: factors associated with rearrest and retention of drug-using women following release from jail.*, 53 J. AM. MED. WOMEN'S ASS'N 89-93 (1998).

¹²⁶ Carolyn Russell, *Transitions: The Reentry Community*, TRANSITIONS (The Reentry Clinic, St. Paul MN), August 2011 at 6.

any human society, and always has been.¹²⁷ In light of this fact, prison administrators must work with other stakeholders-- social workers, counselors, job coaches, housing placement staff, and legal advocates, among others—to provide opportunities for individuals who are reentering society. Addressing imprisonment and eventual release as a single-faceted issue will only perpetuate punishment and the private spectacle that continues to oppress us all.

There is, as of yet, no empirical research to provide 100% confirmation that adding legal services to the options for women leaving incarceration provides a better outcome for women and the community. However, preliminary research and theory application suggest that these kinds of clinical programs will have long-range success. It behooves policy makers to carefully consider the cost savings implicated in such an approach, and the long-term benefits to families and communities.

¹²⁷ Foucault, *supra* note ____.