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Giovanna Shay

Western New England University School of Law, gshay@law.wne.edu

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Locked Up, Overlooked

WOMEN BEHIND BARS: THE CRISIS OF WOMEN IN THE U.S. PRISON SYSTEM. By Silja J.A. Talvi. Berkeley: Seal Press. 2007. Pp. xxiii, 295. \$15.95.

*Reviewed by Giovanna Shay**

I. Introduction

In the late 1990s, an official of the Violence Against Women Act (“VAWA”)¹ office in Washington, D.C. told me that VAWA funding was not available for programs for incarcerated women who were survivors of abuse. VAWA funds, she explained, were not meant for offenders, and a woman could not be both a victim and an offender. It did not matter, in her view, if the woman was incarcerated for something unrelated to the abuse that she had suffered, such as a drug offense. If a woman was locked up, VAWA was not intended to benefit her.²

Hearing this should not have surprised me, given that VAWA was passed as part of the Violent Crime Control and Law

* Assistant Professor of Law, Western New England College School of Law. J.D., Yale Law School. The author has represented incarcerated women and advocated on their behalf in a number of contexts. Thanks to readers Elizabeth Alexander, Erin Buzuvis, Beth Cohen, Jody Kent, Christopher Lasch, and Sudha Setty, and to research assistant Kate LeMay.

1. 42 U.S.C. §§ 13925-14045d (2000).

2. My account of this conversation is not offered as a definitive statement of the VAWA office’s policy at that time. I use it as my starting point because, even a decade later, I recall the exchange as particularly salient. *See also* Brenda V. Smith, *Sexual Abuse of Women in United States Prisons: A Modern Corollary of Slavery*, 33 *FORDHAM URB. L.J.* 571, 592 (2006) [hereinafter Smith, *Sexual Abuse*] (“[T]he prohibition on the use of [VAWA] funds for any individual in custody, means that the significant number of women in prison with histories of physical and sexual abuse both prior to and during imprisonment are ineligible for services funded by VAWA II, the largest source of funding nationally for these programs.”); Jaime M. Yarussi, *The Violence Against Women Act: Denying Needed Resources Based on Criminal History*, *CRIM. L. BR.*, Spring 2008, at 29, *available at* http://www.wcl.american.edu/nic/resources/vawa_criminal_law_brief.pdf?rd=1 (discussing how VAWA and the Victims of Crime Act (VOCA) of 1984, 42 U.S.C. §§ 10601-10605 (1994), fail to provide funding for sexual assault survivors who are raped while incarcerated).

Enforcement Act of 1994.³ Nonetheless, the official's remark stayed with me while I worked as a public defender and represented incarcerated women in a number of contexts. To me, it epitomized the problems with the union of the domestic violence and crime control movements,⁴ as well as mainstream feminism's all-too-frequent indifference to incarcerated women and poor women of color, more generally.⁵ It typified an era in which incarceration wrecked havoc on communities of color.⁶ And it illustrated an absolutist view of our criminal justice system: you're either a victim or an offender, and once you're labeled as the latter, you have little hope of working your way back.

The exchange was all the more troubling because it occurred against the background of a skyrocketing incarceration rate for U.S. women—increasing 757 percent between 1977 and 2004.⁷ This increase had a disproportionate effect on poor women of color, with African-American and Latina women comprising sixty percent of female state and federal prisoners in 2006.⁸ Much of the increase was a byproduct of the so-called

3. Pub. L. 103-322, 108 Stat. 1796 (codified as amended at 42 U.S.C. §§ 13701-14223 (2000)). The Violence Against Women Act was enacted as title IV, sections 40001-40703 of this act. *Id.*

4. See KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 1-15 (2008); Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741 (2007); Holly Maguigan, *Wading Into Professor Schneider's "Murky Middle Ground" Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 427 (2003); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657 (2004).

5. See Linda L. Ammons, *Mules, Madonnas, Babies, Bath Water, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003, 1031-56 (1995); Smith, *Sexual Abuse*, *supra* note 2, at 590-92.

6. See Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004). See also Nancy Gertner, *Women Offenders and the Sentencing Guidelines*, 14 YALE J.L. & FEMINISM 291 (2002); Nekima Levy-Pounds, *From the Frying Pan Into the Fire: How Poor Women of Color and Children are Affected by Sentencing Guidelines and Mandatory Minimums*, 47 SANTA CLARA L. REV. 285 (2007); Myrna S. Raeder, *Gender-Related Issues in a Post-Booker Federal Guidelines World*, 37 MCGEORGE L. REV. 691 (2006).

7. SILJA J.A. TALVI, *WOMEN BEHIND BARS: THE CRISIS OF WOMEN IN THE U.S. PRISON SYSTEM* 3 (2007).

8. *Id.* at 7.

War on Drugs.⁹ Many of these incarcerated women were also abuse survivors—in 1999, more than half of women in state institutions reported a history of physical or sexual abuse.¹⁰

In the ten years since that conversation, women prisoners have received increasing attention from lawyers¹¹ and courts,¹² academics,¹³ human rights organizations,¹⁴ journalists,¹⁵ and

9. See *id.* at 24, 27.

10. *Id.* at 60.

11. See Brenda V. Smith, *Reforming, Reclaiming or Reframing Womanhood: Reflections on Advocacy for Women in Custody*, 29 WOMEN'S RTS. L. REP. 1 (2007) (discussing litigation and advocacy efforts on behalf of women prisoners).

12. See, e.g., *Women Prisoners v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994), *vacated in part, modified in part*, 899 F. Supp. 659 (D.D.C. 1995), *remanded*, 93 F.3d 910 (D.C. Cir. 1996) (analyzing challenges relating to custodial sexual abuse, OB/GYN care, programming, and environmental conditions). See also *Jeldness v. Pearce*, 30 F.3d 1220, 1229 (9th Cir. 1994) ("It is clear to this court that state prisons receiving federal funds are required by Title IX to make reasonable efforts to offer the same educational opportunities to women as to men."); *Glover v. Johnson*, 478 F. Supp. 1075, 1083 (D.C. Mich. 1979) ("Significant discrimination against the female prison population occurs in several areas of programming at Huron Valley in violation of the Fourteenth Amendment . . ."). But see *Klinger v. Dep't. of Corr.*, 31 F.3d 727, 733 (8th Cir. 1994) (rejecting equal protection challenge to women prisoners' programming); *Pargo v. Elliott*, 894 F. Supp. 1243, 1279 (S.D. Iowa 1995) (same).

13. Academic work in this area includes legal scholarship. See, e.g., Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women's Prisons*, 42 HARV. C.R.-C.L. L. REV. 45 (2007); Marsha L. Levick & Francine T. Sherman, *When Individual Differences Demand Equal Treatment: An Equal Rights Approach to the Special Needs of Girls in the Juvenile Justice System*, 18 WIS. WOMEN'S L.J. 9 (2003); Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151 (1995); Brenda V. Smith, *Rethinking Prison Sex: Self-Expression and Safety*, 15 COLUM. J. GENDER & L. 185 (2006); Smith, *Sexual Abuse*, *supra* note 2; Myrna S. Raeder, *A Primer on Gender-Related Issues that Affect Female Offenders*, CRIM. JUST., Spring 2005, at 4. It also includes criminology and other social sciences. See, e.g., JOANNE BELKNAP, *THE INVISIBLE WOMAN* (3d ed. 2006); MEDA CHESNEY-LIND, *THE FEMALE OFFENDER* (1997); WOMEN AND GIRLS IN THE CRIMINAL JUSTICE SYSTEM (Russ Immarigeon ed., 2006).

14. See AMNESTY INT'L, "NOT PART OF MY SENTENCE": VIOLATIONS OF THE HUMAN RIGHTS OF WOMEN IN CUSTODY (1999), available at <http://www.amnesty.org/en/library/info/AMR51/019/1999>; HUMAN RIGHTS WATCH, ALL TOO FAMILIAR SEXUAL ABUSE OF WOMEN IN U.S. STATE PRISONS (1996), available at <http://www.hrw.org/reports/1996/Us1.htm>; Amnesty International, Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women, <http://www.amnestyusa.org/violence-against-women/abuse-of-women-in-custody/page.do?id=1108288> (last visited Apr. 21, 2009).

15. See, e.g., Fox Butterfield, *Women Find a New Arena for Equality: Prison*, N.Y. TIMES, Dec. 29, 2003, at A3, available at <http://query.nytimes.com/gst/fullpage.html?res=9A05E5D6123EF93AA15751C1A9659C8B63>.

even legislators.¹⁶ However, many of us working in this area still succumb to tunnel vision, focusing on incarcerated women through the narrow lens of prisoners' rights, rather than the wide angle view including free women or the panoramic shot encompassing the broader terrain of economic or racial inequality.

By some logic, incarcerated women should be a focus of feminist scholarship and advocacy, rather than relegated to the periphery. Women prisoners stand at a kind of crossroads. As a population, they represent a particularly concentrated form of what Kimberlé Crenshaw has termed "intersectionality"—the collision of the forces of race, gender, and class.¹⁷ As Beth Richie has argued, physical abuse, economic disadvantage, and racial and gender identities can coalesce to "entrap" poor women of color into crime.¹⁸ Far from being deviant outliers, incarcerated women represent the ultimate combined effects of structural racism and sexism. Because women prisoners' lives embody the issues that ostensibly preoccupy feminist analysis, by rights they should command our attention—if only we weren't so squeamish about the stigma of criminal justice involvement.

II. Talvi's Project

Journalist Silja Talvi's *Women Behind Bars: The Growing Crisis of Women in the U.S. Prison System* ("Women Behind Bars") is an engaging overview of issues affecting incarcerated

16. See Prison Rape Elimination Act, 42 U.S.C. §§ 15601-15609 (2006) (establishing National Prison Rape Elimination Commission, mandating data collection and reporting regarding prison rape, and providing funding to reduce prison sexual violence). See also BRENDA V. SMITH, NAT'L INST. OF CORR., FIFTY STATE SURVEY OF STATE CRIMINAL LAWS PROHIBITING THE SEXUAL ABUSE OF PRISONERS (2001), <http://www.nicic.org/Downloads/PDF/Video/statelaws.pdf> (summarizing state laws criminalizing custodial sexual misconduct).

17. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991). Some commentators have adopted the term "womanism," attributed to Alice Walker, to describe an ideology of women of color that "privileg[es] . . . collective or group rights and identity over individual rights." Lisa A. Crooms, "To Establish My Legitimate Name Inside the Consciousness of Strangers": *Critical Race Praxis, Progressive Women-of-Color Theorizing, and Human Rights*, 46 HOW. L.J. 229, 254 & n.96 (2003) (citing ALICE WALKER, IN SEARCH OF OUR MOTHERS' GARDENS (1983)).

18. See BETH E. RICHIE, COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN (1995).

women.¹⁹ It succinctly illustrates some of the important connections involving the War on Drugs, racial disparity, and the high rate of substance abuse and physical and sexual abuse among incarcerated women. Each of the chapters could be assigned on its own to a class or reading group. While Talvi states that she is not trying to write a scholarly book,²⁰ as a contribution to public discourse, *Women Behind Bars* furthers the goal of increasing awareness about the growing population of women prisoners.

Talvi bases her account on interviews with women prisoners: she interviewed one hundred women prisoners over two years and corresponded with about three hundred.²¹ She visited prisons and jails in Florida, California, Arizona, Washington, and New Mexico²² and toured women's institutions in the United Kingdom, Finland, and Canada for comparison²³

Women Behind Bars presents a number of important issues regarding women prisoners in a readable form. Talvi begins by setting the stage in a chapter entitled *Here's Your One-Way Ticket to Prison*, in which she explains how women's incarceration rate has risen as a result of a policy of "mass incarceration"²⁴ and why, despite the fact that male prisoners by far outnumber women, she chose to focus on female inmates.²⁵ "[T]he realities of female imprisonment are far more complex and underreported than most Americans seem to realize," she writes.²⁶ Women and girls in the criminal justice system are "almost *never* portrayed [by the media] as three-dimensional human beings"²⁷ Similarly, "[t]he specific emotional and physical needs that females present once they are incarcerated are completely off the radar of most state and federal correctional departments"²⁸

19. See TALVI, *supra* note 7.

20. *Id.* at vii-viii.

21. *Id.* at viii.

22. *Id.*

23. *Id.* at ix.

24. *Id.* at 4.

25. See *id.* at 1-21.

26. *Id.*

27. *Id.*

28. *Id.* at 16.

In a chapter called *Women in Wartime*, Talvi further details how the policies of the War on Drugs contributed to the increasing incarceration of women, particularly women of color.²⁹ Although a bit wide-ranging, mentioning everything from the Texas “Tulia 46” wrongful drug convictions scandal³⁰ to Washington State’s Green River serial killer,³¹ this chapter provides a good account of the impact of the anti-drug crusade. As Talvi summarizes:

Mandatory minimums in general, and the crack cocaine law specifically, started to drag countless women into the drug-war vortex. The [Sentencing Reform Act] permitted little in terms of “downward departures” in sentencing, which would have allowed for consideration of a woman’s circumstances, domestic abuse, drug addiction, caretaking of children or parents, employment, and so on. Worse yet, detectives, agents, and prosecutors began to throw in federal conspiracy charges, which [they] had previously reserved for people involved in high-level organized crime activities³²

Many women, she writes, were bit players in drug organizations and had little information to trade in exchange for leniency—the phenomenon that has come to be known as the “girlfriend problem.”³³

In each of the successive chapters of the book, Talvi addresses different issues affecting this growing population of incarcerated women. Three of the most compelling sections address issues that have been a major focus of advocates’ work on behalf of women prisoners—physical and sexual abuse, inadequate medical care, and deficient mental health treatment.³⁴

The chapter *Abuse Behind The Wall* summarizes many of the important milestones of the last decade in uncovering and addressing custodial sexual abuse.³⁵ “Experiences of extreme violence and sexual abuse in women prisoners’ lives are far

29. *See id.* at 22-53.

30. *See id.* at 50-53.

31. *See id.* at 42-45.

32. *Id.* at 34.

33. *Id.* at 35.

34. *See id.* at 54-150.

35. *See id.* at 54-78.

worse and far more commonplace than most Americans realize,” Talvi writes.³⁶ She discusses the role of international human rights groups, like Amnesty International and Human Rights Watch, in first bringing attention to the abuse of women prisoners.³⁷ Cross-gender supervision, which is common in American prisons and often sanctioned by employment discrimination laws, violates international standards, Talvi writes.³⁸ She describes the devastating effect of sexual harassment and invasion of privacy on women prisoners who frequently have a history of physical and sexual abuse prior to their incarceration.³⁹ The role of class action litigation in addressing custodial sexual abuse is also covered,⁴⁰ as well as the passage of laws heightening criminal penalties.⁴¹ Talvi also discusses the Prison Rape Elimination Act of 2003,⁴² which established the National Prison Rape Elimination Commission, mandates data collection about prison sexual violence, and provides funding to address the problem.⁴³

Talvi frames Chapter 3, the custodial abuse chapter, by recounting the story of the Federal Correctional Institution (“FCI”) in Tallahassee, where an officer suspected of participating in widespread custodial sexual abuse shot the Office of Inspector General (“OIG”) agent who had arrived at the facility to arrest him.⁴⁴ The shooting at FCI Tallahassee occurred within days of the issuance of *Woodford v. Ngo*,⁴⁵ a Supreme Court opinion interpreting the Prison Litigation Reform Act (“PLRA”)⁴⁶ to require prisoners to comply with all of the technical requirements and short deadlines of prison grievance sys-

36. *Id.* at 64.

37. *See id.* at 57, 73.

38. *Id.* at 56-57.

39. *See id.* at 60-67.

40. *See id.* at 75-76.

41. *See id.* at 71.

42. 42 U.S.C. §§ 15601-15609 (2006).

43. TALVI, *supra* note 7, at 71-72, 76. *See also* 42 U.S.C. § 15603 (mandating data collection on prison violence); *id.* § 15605 (providing funding to address prison violence); *id.* § 15606 (establishing National Prison Rape Elimination Commission).

44. TALVI, *supra* note 7, at 54-78.

45. 548 U.S. 81 (2006).

46. Pub. L. No. 104-134, 110 Stat. 1321-66 (codified as amended in scattered sections of 11, 18, 28, and 42 U.S.C.).

tems in order to get a federal complaint before a court.⁴⁷ Commentators and advocates, as well as the National Prison Rape Elimination Commission, have warned that such draconian exhaustion requirements can bar judicial review of custodial sexual assault cases.⁴⁸

Talvi does not discuss the PLRA in this chapter, which is disappointing. In addition to its hyper-technical exhaustion requirement,⁴⁹ the PLRA imposes a physical injury requirement, stating that no prisoner can recover “for mental or emotional injury . . . without a prior showing of physical injury.”⁵⁰ Commentators have warned that this requirement can pose an obstacle to rape victims’ complaints,⁵¹ with one observer describing the physical injury requirement as a “loophole for rapists.”⁵² In fact, legislation has been introduced to amend the PLRA to eliminate this provision.⁵³ However, Talvi does not acknowledge any of the hurdles that the PLRA erects to women

47. *Ngo*, 548 U.S. at 93-95. In *Ngo*, the author served as counsel for amicus curiae the Jerome N. Frank Legal Services Organization of the Yale Law School.

48. See Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America’s Jails and Prisons: The Case for Amending the Prison Litigation Reform*, 11 U. PA. J. CONST. L. (forthcoming 2009); Letter from Reggie B. Walton, Chairman, Nat’l Prison Rape Elimination Comm’n, to Robert C. Scott, Chairman, Subcomm. on Crime, Terrorism and Homeland Sec. and J. Randy Forbes, Member, Subcomm. on Crime, Terrorism and Homeland Sec. (Jan. 24, 2008), available at http://www.savecoalition.org/pdfs/PREA_letter_urgening_reform_PLRA.pdf. For a prior version of Schlanger & Shay’s forthcoming article, see Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America’s Jails and Prisons: The Case for Amending the Prison Litigation Reform*, AM. CONST. SOC’Y, March 28, 2007, <http://www.acslaw.org/files/Schlanger%20Shay%20PLRA%20Paper%203-28-07.pdf>.

49. See 42 U.S.C. § 1997e(a).

50. *Id.* § 1997e(e).

51. See Schlanger & Shay, *supra* note 48.

52. Deborah M. Golden, *The Prison Litigation Reform Act—A Proposal for Closing the Loophole for Rapists*, ADVANCE, June 2006, at 95, available at <http://www.acslaw.org/files/Golden-%20Prison%20Litigation%20Reform%20Act%20-%20June%202006%20-%20Advance%20Vol%201.pdf>. See also Deborah M. Golden, *It’s Not All In My Head: The Harm of Rape and the Prison Litigation Reform Act*, 11 CARDOZO WOMEN’S L.J. 37 (2004).

53. See Prison Abuse Remedies Act (PARA) of 2007, H.R. 4109, 110th Cong. (2007). Again, in the spirit of full disclosure, the author is a member of the Stop Abuse and Violence Everywhere (SAVE) Coalition, which supported the introduction of PARA, and she submitted testimony in support of the bill. See Letter from Giovanna Shay to Members, H. Comm. on the Judiciary (Nov. 6, 2007) available at http://www.savecoalition.org/newdev/Giovanna_Shay_Testimony.pdf (written testimony submitted by author in support of PARA).

prisoners seeking courts' protection from custodial sexual abuse.

In addition to addressing abuse behind bars, Talvi devotes a chapter to the abuse women prisoners suffer in the free world that can lead them to crime. In Chapter 7, entitled *Women Who Kill*, Talvi addresses the prevalence of domestic violence in society generally, and among incarcerated women specifically, and details psychological research on why women might kill their abusers rather than walk away.⁵⁴ This chapter veers a bit oddly from Charlize Theron's role in *Monster*, a film about the executed serial killer Aileen Wuornos,⁵⁵ to the stories of individual women Talvi interviewed who had killed their abusers.⁵⁶ Its exclusive focus on homicide is somewhat narrow, because the chapter could have addressed battered women's criminal involvement in less sensational crimes—property and drug crimes, prostitution, and other crimes committed as a result of abuse.⁵⁷ Nonetheless, Talvi draws the often-overlooked connection between the abuse in women's lives and the crimes that bring them to prison.

In a chapter entitled *Dangerous Medicine*, Talvi catalogues gruesome stories of medical neglect, ranging from botched amputations to untreated cancers.⁵⁸ She discusses the challenges of HIV and hepatitis C in the incarcerated population,⁵⁹ as well as especially virulent emerging infections like drug-resistant tuberculosis and antibiotic-resistant staph.⁶⁰ "There is no way around the fact that women brought to jail or prison represent some of the sickest people in our society, in terms of the scope and severity of their physical and/or mental illnesses," Talvi writes.⁶¹ "Incarceration heaps on a whole new set of potential problems"⁶²

54. See TALVI, *supra* note 7, at 163-93.

55. See *id.* at 171. See also *MONSTER* (Sony Pictures 2003).

56. See TALVI, *supra* note 7, 180-93.

57. See generally RICHIE, *supra* note 18.

58. See TALVI, *supra* note 7, at 79-117.

59. See *id.* at 96-99.

60. See *id.* at 100-106.

61. *Id.* at 96.

62. *Id.*

Talvi notes that childbearing and women's reproductive health present special concerns,⁶³ but she does not deal extensively with OB/GYN issues. These issues are compelling. The shackling of pregnant women is a U.S. practice that has drawn particular criticism from international human rights organizations.⁶⁴ In the summer of 2008, a panel of the Eighth Circuit nonetheless concluded that shackling a woman who was in labor did not violate the Eighth Amendment.⁶⁵ However, as this article was going to press, that court was again considering the case on rehearing en banc, having vacated the panel opinion.⁶⁶ Early in the Supreme Court's October 2008 Term, the Court denied certiorari in a case in which the state of Missouri defended its policy of refusing to transport women prisoners for non-therapeutic abortions.⁶⁷ As a result of this denial, the lower court decision ruling the policy unconstitutional⁶⁸ still stands, and the issue is sure to resurface.

Chapter 5, entitled *Trying to Stay Sane*, addresses mental health care, another area of critical concern because such a high rate of women prisoners report mental health problems.⁶⁹ A 2006 Bureau of Justice Statistics study estimated that seventy-three percent of women state prisoners, compared with only fifty-five percent of male prisoners, suffered from a mental health problem.⁷⁰ This area has also been a focus of civil rights litigation⁷¹ and international human rights advocacy.⁷²

63. *Id.* at 88.

64. See AMNESTY INT'L, *supra* note 14, at 10-12.

65. *Nelson v. Corr. Med. Servs.*, 533 F.3d 958, 963 (8th Cir. 2008).

66. *Nelson v. Corr. Med. Servs.*, No. 07-2481 (8th Cir. Aug. 28, 2008) (order granting rehearing en banc and vacating panel opinion). Happily, in October 2008, the Bureau of Prisons (BOP) adopted a policy outlawing the shackling of prisoners in labor and delivery except when they are at risk of hurting themselves or others or there is an "immediate and credible risk of escape." FED. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, BO PROGRAM STATEMENT No. 5538.05, ESCORTED TRIPS 10 (2008), available at http://www.bop.gov/policy/progstat/5538_005.pdf.

67. *Roe v. Crawford*, 514 F.3d 789, *cert. denied*, 129 S. Ct. 109 (Oct. 6, 2008).

68. *Id.* at 792, 794-98, 801.

69. See TALVI, *supra* note 7, at 118-50.

70. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 4 (2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mhppji.pdf>.

71. See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1279-80 (N.D. Cal. 1995) (concluding that Department of Corrections officials had failed to provide adequate mental health care and that housing mentally ill patients in isolation units constituted cruel and unusual punishment).

In this chapter, Talvi examines the effect of segregation units and supermax prisons on residents' mental health, particularly prisoners with pre-existing mental health issues.⁷³ She describes how mentally ill prisoners' behaviors can be mismanaged by poorly-trained corrections officers, who may respond to them as disciplinary issues.⁷⁴ A young offender with mental health issues was initially sentenced for a fight with her sister, Talvi writes.⁷⁵ Her acting out in prison garnered longer and longer periods of isolation, ultimately pushing her to suicide.⁷⁶ Talvi explains what is now familiar but still difficult to remedy: following deinstitutionalization of the mentally ill, the criminal justice system became the last remaining social safety net.⁷⁷ She argues that it is unfair to place the entire weight of our nation's mental health issues on corrections officers who are not properly prepared for the job but acknowledges that this cannot justify deficient treatment.⁷⁸

International Lockup, which documents Talvi's visits to women's institutions in Canada, Finland, and the United Kingdom, is fascinating.⁷⁹ Although it is difficult to draw conclusions based on a few visits, Talvi notes some measures that the United States should imitate.⁸⁰ For example, in the United Kingdom, Her Majesty's Chief Inspector of Prisons is an office completely separate from the prison service, with keys to all institutions and authority to conduct inspections and make public reports at any time.⁸¹ This is exactly the kind of independent oversight that the Commission on America's Prisons recommended a couple of years ago.⁸²

72. See HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS (2003), available at <http://www.hrw.org/en/reports/2003/10/21/ill-equipped> [hereinafter HUMAN RIGHTS WATCH, ILL-EQUIPPED].

73. See TALVI, *supra* note 7, at 118-50.

74. *Id.* at 133-34.

75. *Id.* at 125.

76. *Id.* at 125-26.

77. See *id.* at 145-46. See also HUMAN RIGHTS WATCH, ILL-EQUIPPED, *supra* note 72, pt. IV.

78. TALVI, *supra* note 7, at 146.

79. See *id.* at 228-66.

80. See *id.* at 234-57.

81. *Id.* at 236.

82. See COMM'N ON SAFETY & ABUSE IN AM.'S PRISONS, CONFRONTING CONFINEMENT 79-81 (2006), available at http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf.

Talvi also presents chapters on lesbian relationships that withstand homophobia behind bars and sometimes survive release,⁸³ interstate transfers that send women prisoners thousands of miles from home,⁸⁴ and “faith-based” programming that has been criticized as state-sponsored evangelism.⁸⁵ In a chapter entitled *Criminalizing Motherhood*, she investigates the punishment of women who fail to comply with societal gender norms and expectations of appropriate mothering.⁸⁶ For example, the anticipated epidemic of “crack babies” failed to materialize, she explains, turning out to be a “government and media-driven hysteria”⁸⁷ Taken together, these essays provide a mosaic of many of the critical issues facing women prisoners in an age of “mass incarceration.”⁸⁸

III. Summing Up

For a project meant to draw on women’s own accounts,⁸⁹ *Women Behind Bars* sometimes lacks richness and complexity. In part, this is because Talvi uses snippets from many different women’s interviews and stories, rather than following any single woman or group of women for a length of time. By contrast, in her 2005 account of women at the Massachusetts Correctional Institution in Framingham, *A World Apart*, Christina Rathbone addressed many of the same issues as Talvi but did so by interweaving the themes among the storylines of a few women’s lives, producing a more textured narrative.⁹⁰

Talvi chose not to address the ramifications of women’s incarceration for their children and families, reasoning that other recent works have explored these issues.⁹¹ Nor does she spend much time on the paths that lead women to prison or the realities of their lives upon release. These were consequential decisions. Writing about women prisoners only within the context of the institutions in which they are incarcerated—rather than

83. See TALVI, *supra* note 7, at 194-207.

84. See *id.* at 218-27.

85. See *id.* at 208-17.

86. See *id.* at 151-62.

87. *Id.* at 155.

88. *Id.* at 4.

89. *Id.* at viii.

90. See CHRISTINA RATHBONE, *A WORLD APART* (2005).

91. TALVI, *supra* note 7, at 11.

as women whose lives lead them to incarceration and who ultimately rejoin the free world—tends to reinforce the “silo” mentality. It narrows the focus and fails to capture the interconnectedness of incarcerated women and their communities.⁹² Journalist and MacArthur Fellow Adrian Nicole LeBlanc powerfully demonstrated the connections in her masterful 2003 book *Random Family*, which followed a group of individuals from the Bronx over a number of years, including periods of incarceration.⁹³

Despite these flaws, *Women Behind Bars* is a readable and useful account. A project based on interviews with incarcerated women presents innumerable logistical and bureaucratic obstacles. In the book’s conception and execution, Talvi demonstrates laudable creativity and fortitude.

Talvi opens the first chapter with a quote from Jessica Mitford’s account of her 1970 stay at the D.C. Jail, an investigation that she undertook for her 1971 book *Kind & Unusual Punishment: The Prison Business*.⁹⁴ Talvi writes that “Mitford asked the poignant question of whether our city streets were actually safer because these women were locked behind bars, without access to psychological counseling, treatment for addic-

92. Researchers are empirically documenting these links, mapping the neighborhoods from which prisoners originate and to which they return, which are often poor communities of color. See Justice Mapping Center, <http://www.justicemapping.org> (last visited Apr. 21, 2009); Urban Institute, Reentry Mapping Network, http://www.urban.org/reentry_mapping/index.cfm (last visited Apr. 21, 2009). See also Erica Cadora, Charles Swartz & Mannix Gordon, *Criminal Justice and Health and Human Services: An Exploration of Overlapping Needs, Resources, and Interests in Brooklyn Neighborhoods*, in PRISONERS ONCE REMOVED 285 (Jeremy Travis & Michelle Waul eds., 2003). My thinking on this point was sharpened by a presentation by Michael B. Mushlin and Naomi R. Galtz, entitled *Getting Real About Race and Prisoner Rights*, at the Fordham University School of Law Colloquium on Conditions of Confinement on October 24, 2008. See Michael B. Mushlin & Naomi Roslyn Galtz, *Getting Real About Race and Prisoner Rights*, 36 FORDHAM URB. L.J. 27, 46-51 (2009).

93. See ADRIAN NICOLE LEBLANC, *RANDOM FAMILY* (2003). This book featured, in part, the work of my former teacher and colleague, Yale Law School Clinical Professor Brett Dignam, who represented one of the women in a civil rights suit arising out of custodial sexual abuse. *Id.* at 288-89. Another book that uses prisoners’ families’ stories to demonstrate the inside-outside nexus (albeit with a primary focus on male incarceration) is Professor Donald Braman’s anthropological study, *DOING TIME ON THE OUTSIDE* (2004).

94. TALVI, *supra* note 7, at 2 (quoting JESSICA MITFORD, *KIND AND UNUSUAL PUNISHMENT: THE PRISON BUSINESS* (1973)).

tion, or vocational training.”⁹⁵ Thirty-eight years later, Talvi points out that we are still asking the same questions; but instead of the 11,000 women who were incarcerated in 1977, there are now more than 111,000.⁹⁶

Because it is so accessible, Talvi’s project can help focus attention on this growing population of women prisoners. Incarcerated women’s stories represent a distillation of the larger forces that affect free women—racism, sexism, and economic pressure. For these reasons, among others, incarcerated women should not be forgotten, despite the stigma of their criminal convictions and their physical removal from the community. Though incarcerated women may be locked up, they should not be overlooked.

95. *Id.*

96. *Id.* at 3.