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FOREWORD: SYMPOSIUM ON GENDER & INCARCERATION

GIOVANNA SHAY*

This symposium edition of the Western New England Law Review includes four thoughtful pieces on gender and incarceration by accomplished contributors. Terry Kupers describes how incarceration and the threat of prison sexual violence shapes gender roles, particularly toxic masculinity. Rachel Roth addresses reproductive justice issues in prison, including access to abortion for incarcerated women and the use of restraints in labor. Carol Strickman of Legal Services for Prisoners With Children, an organization that has long been a leading voice for incarcerated parents, writes about family ties, visitation, and parent-child programs. And Jen Manion discusses the gendered history of punishment itself.

The authors describe facets of American incarceration in 2017 that interface with gender: a “blue code” of guards turning a blind eye to prison sexual assault (Kupers); children traumatized by separation from an incarcerated parent (Strickman); transgender prisoners vulnerable to abuse, assigned to facilities that do not match their gender identity (Kupers, Roth). It is a “vast carceral network that contains so many with callous regard” (Manion), holding “one of every three women held prisoner in the entire world” (Roth).

This symposium appears in a time of great uncertainty. Only a few months ago, it seemed that a critical mass of policy-makers agreed that the nation’s reliance on mass incarceration was too expensive, damaging economically and socially, and, ultimately, counter-productive.¹ For the first time in decades, as a result of bipartisan criminal justice reform measures, prison populations were beginning to decline.² During the 2016 campaign, however,

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1. Carl Hulse, *Unity Was Emerging on Sentencing: Then Came Jeff Sessions*, N.Y. TIMES (May 14, 2017), <https://www.nytimes.com/2017/05/14/us/politics/jeff-sessions-criminal-sentencing.html>.

2. Richard A. Oppel, *States Trim Penalties & Prison Rolls, Even as Sessions Gets Tough*, N.Y. TIMES (May 18, 2017), <https://www.nytimes.com/2017/05/18/us/states->

President Trump declared himself the “law and order candidate.”³ This administration’s U.S. Attorney General has directed federal prosecutors once again to seek the harshest sentences possible, returning to the “tough on crime” rhetoric of the “war on drugs.”⁴

It remains to be seen whether the Attorney General’s directive from Washington reverses the momentum at the state and local level to reduce over-incarceration. Most of American law enforcement is local. Carol Strickman describes the pressures of over-crowding in California prisons; the litigation, hunger strikes and “realignment” efforts that followed. What is clear is that we cannot rely on an assumption of linear progress, in this or any other area of social justice. On the contrary, threats have returned to shadow immigrants, Muslim Americans, LGBTQ people, and the poor.

The world’s largest prison society will not go gently. Neither will the harshly gendered world it reinforces. As Jen Manion points out, since the earliest days of our nation, people of color and women who did not comply with traditional gender roles have been marked for criminal punishment. Ironically, nineteenth century reformers’ efforts produced the modern prison and the concept of solitary confinement.

In the words of 20th century civil rights hero Ella Baker, “We who believe in freedom cannot rest.” Rachel Roth has succinctly outlined a three-prong plan: address specific issues that cause prisoners suffering; hold governments accountable; and reduce the prison population. We can also hold fast to a lesson of this past year—change can come quickly, and when you least expect it.

prisons-crime-sentences-jeff-sessions.html.

3. Geoff Nunberg, *Is Trump’s Call for ‘Law and Order’ A Coded Racial Message?*, NPR (July 28, 2016), <http://www.npr.org/2016/07/28/487560886/is-trumps-call-for-law-and-order-a-coded-racial-message> [<https://perma.cc/WHZ6-PUUD>].

4. Oppel, *supra* note 2.