

TURNER:

Hello and welcome back to Wisconsin Law and Action, a podcast where we discuss new and forthcoming scholarship with University of Wisconsin Law School professors. I'm your host, Kris Turner. And my guest today is the 2021- 2022 University of Wisconsin Law School, William H. Hastie fellow, S. Lisa Washington. Professor Washington is here today to discuss her forthcoming article, *Survived and Coerced. Epistemic Injustice in the Family Regulation System*, forthcoming in the *Columbia Law Review*. The article examines how the family regulation system mirrors the criminal justice system and in practice finds that parents encounter a system as coercive, intrusive, and disempowering, especially for already marginalized communities. Professor Washington argues that a growing movements and the injustice and the family regulation system can sync up with the current reckoning with the criminal justice system and demand an end to the marginalization and coercing that exists within that system. Thank you for joining the podcast today for a very timely discussion, Professor Washington.

PROF. WASHINGTON:

Hi, and thank you. I'm really excited to be here.

TURNER:

Before we discuss your article, let's learn a little bit more about your professional background. So what led you to academia and what are your research and scholarly writing interests?

PROF. WASHINGTON:

So, before I came to the University of Wisconsin, I was a public defender in New York City. So I worked for The Bronx Defenders, and I was representing parents who were prosecuted by the criminal legal system, but often also by the family regulation system. And I defended them in family court, in cases that involve neglect or abuse allegations. And part of that was also, or sort of a separate part of that position was supervising students in the defense clinic at Cardozo, was a family defense clinic, that I was co-directing with another colleague. And so the students had the opportunity to work on family court cases, but also to get to know our office better and get some experience in the criminal legal practice, but also in the immigration practice and see how all those systems work together.

PROF. WASHINGTON:

And that is what my research is about too. And that is what led me into academia. I don't really see my leaving being a public defender as a break with those things. It's sort of a way of thinking about those same issues in a different way, and sort of discussing them more broadly writing about them, teaching about them. But I will say that having the opportunity to teach a clinic at Cardozo is one of the reasons why I decided that academia is really something that I wanted to pursue.

TURNER:

I love speaking with clinical faculty, people that work in these kinds of areas, because it just brings for such interesting stories and experiences that you have. And that Wisconsin of course has a pretty strong clinical program as well. And we spoke with Anne Smith, one of our clinicians. And so I'm happy to have you on as a clinical faculty member as well. So again, thank you for joining us. But, we also mentioned in my little introduction that you are the Hastie Fellow this year. Can you tell me more about this program before we get into your article?

PROF. WASHINGTON:

Sure. So the fellowship has a really, really long tradition at UW. I think it's been in existence for over 40 years, and the idea is to prepare candidates who are aspiring scholars for the legal teaching market. And it's specifically sort of designed to help those who traditionally are underrepresented in academia, right? Whether that's because of the institution that they went to, whether that has to do with their identity. And so all of those overlapping things can be a barrier that stops people from entering the legal academy. And the Hastie Fellowship is one way of creating inclusion.

TURNER:

Well, thank you for giving us that background, the Hastie Fellowship and on your own professional backgrounds. But with that, let's dig into your article that you just post on SSRN. You began with several survivor narratives from your time as a public defender in The Bronx. And there are more of these narratives throughout your paper. In your time as a public defender or with the clinic in New York City, how often did you see these scenarios played out with unwanted intrusions and coerced testimony? Where these experiences what motivated you to focus on this topic?

PROF. WASHINGTON:

Yeah, you're right. My focus in this paper is specifically on domestic violence survivors. But that's sort of just a portion of the cases that I was involved in. A lot of cases obviously involve allegations of domestic violence. And I highlight those in my paper. But there are a lot of other allegations that are involved in a lot of social issues that play a role in those cases. And so I think the answer to your question is there are these course narratives for survivors, but there are also course narratives generally for parents who are entangled in the system. So that's not something that's exclusive to that form of allegation, but it's something that really underlies the system. And something that I try to argue is at the core of the system. And so when you ask, do I see this often? I think it sort of is something that's never separate really from a case. There's always some level of coercion involved and some level of punishment, even in a system that a lot of people perceive to be a system that is there to support or rehabilitate parents.

TURNER:

So perhaps these survivor narratives kind of emphasize and underline something that is a little bit inherently disingenuous or unfair with the system itself.

PROF. WASHINGTON:

Exactly. It's sort of one example of a larger phenomenon within that system.

TURNER:

That's really interesting. You did a great job pulling out with these narratives that you discussed in your paper. So I did notice a couple of times, just in what we did begin discussing here, they use the term family regulation system to describe what is commonly called the child welfare system. Why did you choose to use that term, family regulation system?

PROF. WASHINGTON:

It was really important to me that my language really reflects the nature of the system. And because I don't believe that the system is a benign system that really truly focuses on the welfare of parents, of their children or of families and the communities that they live in. I wanted to highlight a word or use a

word that really describes or gets at the punitive nature of the system and the way that the system intersects with other carceral systems. And so there are other scholars, scholars like Dorothy Roberts whose work I really build on and take into consideration in my scholarship that uses terms like family regulation system or family policing system. Because the system is a system that has a huge impact on a lot of parents and on a lot of families. And it's important to highlight those power structures and how they relate to marginalized communities.

TURNER:

Right. The term regulation to me, especially jumps out there and policing, as you mentioned, family policing system. So turning to part one of your paper, you're looking more closely at the survivor narratives and the role they play in the legal field and how they developed over time. How would you describe the changing narrative that the carceral and family regulation systems have toed so far?

PROF. WASHINGTON:

I think sort of the most harmful part of this is the idea that there's only one true narrative or one true response, just sort of one piece of knowledge that we should be listening to or crediting. And that is something that I see in this system and something that I see really shows up in cases that involve survivors of domestic violence. And that narrative is often that those, and it's often women who are represented in cases like this are perceived to be helpless, that they're perceived to be weak and that therefore they're bad mothers, they're manipulated in a way that they can no longer make any decisions for themselves or their families. And there's very little nuance in those narratives. There's very little room for people who are involved in the system to say, this is the support that I actually need. And the support that I need is not necessarily the state intervention that the family regulation system is contemplating.

PROF. WASHINGTON:

And so I think one problem is sort of that there's this one boiler plate narrative that someone has to tell, or that the family regulation system relegitimizes over and over again by coercing narratives from survivors. What does that tie to? I think that's tied to a larger movement and a larger development in feminist legal theory and the tension between carceral feminism and anti-carceral feminism. And if we go back to the roots of the anti-violence movement in feminist legal scholarship, and the way it's discussed is a lot of what was at the center of that was agency and women making choices and people who are sort of in violent relationships, making choices for themselves about how they would want to respond to that and what kind of support they needed, and that nuance is being taken out in the family regulation system.

TURNER:

So what is the relationship between coercion tools that you discussed briefly just now and the narratives and the family regulation system?

PROF. WASHINGTON:

Well, the family regulation system has a lot of power on its own because it can remove children from their families, sometimes temporarily, but sometimes more permanently. And I speak about that in my paper as well. A lot of people call that the civil legal death of a family. But it also has a lot of power in that it operates with other system. And I've already said, it operates with the criminal legal system. Sometimes these actors within that system actually cooperate, exchange information, but it also is

connected to the immigration system. And so the system has a lot of power on its own, but also as it overlaps with other systems. And people who are entrapped in that system realize that, and that they know that they're up against a lot.

PROF. WASHINGTON:

They know that their employment might be at stake. Their family composition might be at stake. Their ability to stay in this country may be at stake. So those are sort of all intersecting issues that are at play here. But I think it makes sense to give you an example of how that can play out in practice a little bit. There's this pretty prominent case in New York, it's from 2002, called Nicholson V Williams. And it was a case in New York where a woman was a survivor of domestic violence, acknowledged that and separated from her partner, part of why there was a violent situation between them was because she wanted to separate from him actually.

PROF. WASHINGTON:

And so her kids were later removed from her care. And she was asked to comply with a host of services that she didn't really want to comply with, and that she didn't feel that she needed. And in testimony, the case worker working on our case, a case worker in the family regulation system said, "Well, it's sort of a tactic that we use, that we remove children and we give it a couple of days. And usually the mother will then comply with whatever we ask them to do." And so that's sort of the connection between the coercion tools, the family separation, the classes that are being forced on people and the narratives that a lot of people feel that they need to tell in order to succeed within that system.

TURNER:

That's a pretty harsh way to use coercion too, to say your kids are being removed in order for you to comply, just as such a stark example, where he brings home the connective tissue between these different tools of the state, as you mentioned, between immigration criminal and family regulation systems. In part two, you argued that the epistemic injustice caused by these tools and outmoded narratives manifests in three distinct ways. But first, what is epistemic injustice?

PROF. WASHINGTON:

So epistemic injustice, theorizes who is able to contribute their knowledge meaningfully to our collective pool of knowledge, really about anything. That can be about child safety specifically. And that's sort of what I'm talking about in my paper, but generally just how we come to understand things as we understand them. And what we think is true, what we think is a true narrative and all of those things. And epistemic injustice focuses on the injustices within that process. So if someone based on their identity excluded from telling certain narratives, if someone excluded from sharing knowledge, and how does that as a whole harm us and harm our collective understanding of what we know? So basically who knows something, how do we know these things and who do we allow to be part of this collective knowledge building?

TURNER:

So with that, what are the three ways that these harm or narratives manifest in the family regulation system?

PROF. WASHINGTON:

So, as we talked about a little bit through our networks is that, one, survivors are coerced into telling a certain narrative that comports with knowledge that already exists within the valley regulation system. So they're basically asked to confirm what the system already holds as true or believes or thinks is valid knowledge. And everyone who doesn't comply with that is discredited or ultimately is excluded from contributing anything about child safety, about violence, about family support. But, it also legitimizes that system itself by excluding certain narratives about that system, by excluding narratives that would tell no, this was actually harmful for me. This was harmful for my family. We're also not allowed allowing that discourse to come in. So there are several different aspects to this.

PROF. WASHINGTON:

Another thing is that I believe, and I argue this in my paper, is that by focusing so much on individual blame, focusing so much on what the survivor did wrong or should have done, or what we think she should do, we are really ignoring the structural issues that underline a lot of these cases. Structural issues of have a need for housing, have a need for real support, in a way that... And the way we ignore those things by saying, well, this is really you and your deficits and not a structural issue. And I think that's the deeper danger in this.

TURNER:

It sounds a bit like it's self perpetuating as it's manifesting and say, this system is working here are the narratives that say it's working because these narratives are both outmoded and just epistemically and just.

PROF. WASHINGTON:

Right. Exactly.

TURNER:

So turning to part three, this was my favorite section of your whole paper. I liked the whole paper, of course, but then I enjoyed this part quite a bit. In it, you examine how language can be weaponized in ways that perpetuate epistemic injustice and furthest domestic violence narratives. Specifically, you talk about the term insight. How does the term insight play a role in the family regulation cases that are decided?

PROF. WASHINGTON:

So the word insight was sort of word that left me very confused as I was practicing, especially when I was a new attorney. Because, it didn't really mean a lot, but came up a lot in cases, not just in domestic violence cases, but also in all kinds of other cases in the family regulation system, including mental health cases. And I learned over time that the reason I was confused is because it is a confusing term. And because it is a really vague subjective term that operates on a case by case basis, and is often weaponized in a way that it is used after a parent has complied, which is also a language that comes up a lot in the family regulation system. What sort of everything that is asked of them. They have done the domestic violence class. Maybe they've done a mental health evaluation.

PROF. WASHINGTON:

They've done a parenting class. They've let case workers into their homes over and over again. And they've done everything that you would think the system wanted them to do. And then sometimes

they're accused of not showing enough insight into their situation. And in this particular case, insight into what led to this case, meaning the domestic violence, whether or not someone actually believes there was domestic violence, whether or not they believe that state intervention was necessary. And so parents find themselves in a conflicted situation because they might have to come up with a narrative that shows insight when they don't actually believe that what sort of the listener here wants to hear is correct. And so that's a tension that we find a lot, and is a tension that can feel really punitive to have to sort of pair it back a narrative that is not your own narrative.

PROF. WASHINGTON:

And I think that's sort of a big part of this epistemic injustice piece, and a part that discredits those who are unable to tell that narrative and excludes their experience and sort of takes out the out of their experience. And it sort of leaves them without the possibility to share what would actually have been helpful. I name a lot of cases throughout the piece. And one thing that I find is important over and over again is someone having a real support system in their community. Having stable housing, having employment, all of those things or whatever else someone thinks is important for them to thrive. And those are often overlooked, because what actors within that system are so focused on is does the person understand why they are here? Are they able to tell us what they've experienced, what they've learned in a way that resonates with us? Even if that doesn't resonate with their own experience.

TURNER:

It seems to take it even to another level where it's not just a coerced narrative, it's a coerced false, or at least false ringing narrative. Where this isn't the story that they feel like they can tell, but they have to tell in order to show insight, whatever that term might mean. Often we think of the justice system is trying to get the truth out there and get to the bottom of it. And now here is a case where you have to tell a narrative that may not be truthful, but will also end in the result that you want in order to make sure that your family does not end, as you put it earlier.

PROF. WASHINGTON:

Yes. And I think that has a lot to do with what we accept as truth to begin with, and who do we believe tells the truth and that intersects with people's identity. Yeah.

TURNER:

Right. Exactly. The term insight is just like some of those other terms that you see in statutes in cases where you're saying, I think five different people could give you seven different definitions of what that term means. And it just becomes very frustrating and just leaves things much more ephemeral and unsure when it comes to the statutes, especially in such a serious situation as a family regulation case. But I do want to turn towards your conclusion, where you asked the question, how do we address harm in ways that do not further subjugate marginalized knowledge? What conclusions did you come to?

PROF. WASHINGTON:

I think the epistemic informed answer to that would be, we have to make room for nuanced experiences. We have to make room for nuanced knowledge and narratives, and that can only happen if someone doesn't think they will be punished, if they tell what they believe to be true. And if they tell their story, so that's one step. And there are movements right now, movements led by people who are impacted by the system, who are able to tell that narrative and they're telling those narratives.

PROF. WASHINGTON:

I think there's sort of on actors within that system to listen to those narratives and make room for them. But I think, and I said earlier that a lot of what's happening is that the underlying social structures are being ignored and the focuses on individual flaws, and individual deficits. So I don't think there'll be real change until we get at those structural issues and dismantle those issues. I think there's also a real lack of understanding of how these systems operate together. A lot of people know or understand that this is part of a large conversation right now, about the issues in the criminal legal system, but not everyone understands that the system doesn't operate alone. It has other systems that work together with that system or mirror that system and can be just as punitive as the criminal legal system.

TURNER:

Right? I think that connective tissue is not always clear to say, here's how family regulation connects to criminal justice, connects to immigration, as you mentioned earlier. And to expose that connective tissue would be very important for people to understand how these systems work structurally in order to change it, to make more room for these stories. I like that idea of making room for these stories as you, again, discussed because there is room for them and we want them to be included. I think that's very important than your paper. But you end your paper with a very compelling quote, and I have to read it if I may, because I thought it was very interesting, especially the story behind the quotes. So this quote sadly illustrates coercion in action.

TURNER:

So this quote is from Joyce McMillan, a black woman activist impacted by the family regulation system. She says, "A system that tries to silence the voice of a person seeking the change is not only dishonest, but vile and repulsive. Seeking only to change their image, not their practices." Following that quote, child protective services in New York city threatened to terminate the contracts they held with Ms. McMillan's company if they didn't fire her. Do you see actions like this ending anytime soon? And if not, what steps can be done to help change current narrative and coercion tactics?

PROF. WASHINGTON:

I don't think that unless there's real radical change, that we'll see a big difference. We've seen throughout the pandemic, that there have been some changes in the family regulation system, but the family regulation system even continue to operate throughout this health crisis and continue to do home visits. Continue to charge parents with neglect or abuse in really tough situations. And so I don't think that there'll be true change until we get at the structures that underlie those systems. And until we make the connections with other carceral systems. I do think a good first step is for people to become aware of those intersections. And again, to make sure that we make room and I don't even want to say elevate those voices because I think those voices are out there. I think it's just that... And the narratives are out there. It's just a matter of listening to them and taking them seriously and centering them in the conversation.

TURNER:

Right? If things don't change because of a pandemic, it shows even more so the structure is something that has to be more radically changed. I think that illustrates it rather vividly, as again, you illustrate in your paper. So now for my final question for you, and probably my favorite one in these kind of discussions is, what do you hope researchers take away from your own work?

PROF. WASHINGTON:

I hope they take away that there is a lot that is under theorized here. That these connections and these intersections of the carceral system and the carceral state are really under examined. And I'm really interested in unpacking and detangling those intersections. There was a piece that I'm working on now that is dedicated to that as well. And plans to sort of expand on that. I think that's one thing that I would want researchers to take away from that.

TURNER:

Oh, I can't wait to read that paper. I'm already interested in seeing what you have to say about it. So I lied to you. I have one more question. Another good one. Where can people find more of your work?

PROF. WASHINGTON:

So I am on Twitter. It's, S Lisa Washington, and I will be posting things as I write them and I'm ready to share them, so you can find me there.

TURNER:

Great. And please follow her. There's always great things coming out here. And I can't wait to see more of what you're going to be posting very soon. And, of course, we will post links to Professor Washington's SSRN page, where her Columbia Law Review forthcoming article is already available. Thank you for joining us today, Professor Washington. We've been discussing, *Survived and Coerced: Epistemic Injustice, and the Family Regulation System*. Forthcoming in the Columbia Law Review. Thanks to everyone out there for listening. I hope that by now you're subscribed to our Wisconsin Law and Action podcast. But if you aren't, you can find us on the Apple iTunes store or on Stitcher, or listen to our full archive at wilawinaction.law.wisc.edu. Thanks again for listening. See you next time. And happy researching.