

A WOMAN'S RIGHTS: PART 5

The Mothers Society Condemns

BY THE EDITORIAL BOARD

Kasey Dischman was 7 years old, and had already endured years of sexual abuse at the hands of a relative, when she learned that alcohol could blot out her nightmares. By the time she was 10, she'd discovered marijuana, which curbed her waking anxiety and depression.

By 13, she was taking the bus into downtown Butler, Pa., to search for whatever drugs she could find. It was on one such hunt that someone introduced her to heroin. And it was on a quest to find more heroin, a few months later, that she met Andy Lucas, a drug dealer with long flowing hair and a flirtatious grin.

A year later, the couple was living with Mr. Lucas's mother, and Ms. Dischman was in thrall to the twin forces that would carve her path to adulthood: Mr. Lucas and heroin.

Her longest stretch of sobriety began when she was 20 and pregnant with the couple's first child. Mr. Lucas had just received a lengthy prison sentence. Ms. Dischman joined a 12-step program, went on Suboxone, a medication that treats opioid addiction, and stayed off heroin for almost seven years — long enough to claw her way into the middle class. She worked her way up to a management position at a real estate firm, and moved to a better neighborhood than the one she'd grown up in. She found that motherhood suited her. She sent her daughter to private school and Girl Scouts. Mother and daughter liked to style each other's hair in the mornings before work and school, and Ms. Dischman hosted regular sleepovers for her girl's friends.

Then Mr. Lucas — out of jail, sober and holding down a steady job — suggested they move back in together. Ms. Dischman thought that maybe, after nearly 15 years punctuated by relapses and prison sentences, they could finally build a stable family.

Instead, the couple reverted to their old ways. "It was like we didn't know how to be sober together," Ms. Dischman says. Within a year, she was pregnant with the couple's second child and struggling to escape heroin again. She went back on Suboxone, but then was sentenced to six

months for shoplifting. In jail, she was forced off the medication and into an abstinence that proved too fragile. Mr. Lucas was dealing again, and just a few nights after her release, she found a small bag of heroin tucked under the couch. In that moment, she says, neither her 8-year-old daughter nor the fetus that had been growing in her womb for seven months were enough to overpower the pull she felt.

"It's almost like I forgot about them," she says. "I know that's awful, and that people think I don't have a conscience. But that's exactly what addiction is. Once it enters your head to do that shot, you develop this tunnel vision that nothing can break." She injected the dose.

It sent her into cardiac arrest.

Stories like Ms. Dischman's are hard to hear. It's difficult not to think that, however little control she had over her circumstances, her child and her developing fetus had far less. And it's easy to understand why some lawmakers, prosecutors and members of the general public want to strip women like her of their parental rights.

In fact, according to ProPublica, women in at least 45 states have faced criminal charges for drug use during pregnancy, in most cases through a mix of prosecutorial and judicial overreach. And according to National Advocates for Pregnant Women, an advocacy and legal group that works on cases like Ms. Dischman's, in just about every state, expectant mothers with a history or suspicion of drug use face a litany of assaults on their civil and human rights: nonconsensual drug testing that violates Fourth Amendment protections against unreasonable search and seizure; arbitrary family separations that ignore due process laws; court supervision that undercuts medical privacy; and compulsory treatment that violates the individual right to choose.

"We have taken what is fundamentally a health problem and made it into a criminal law problem. We've used the criminalization of certain drugs for ... controlling certain groups of people, particularly black and brown people,"

Pregnant women with a history of drug use face a litany of assaults on their liberties.

says the founder and executive director of National Advocates for Pregnant Women, Lynn Paltrow. That this dynamic is “being used as a mechanism for controlling pregnant people should come as no surprise.”

Illicit drug use during pregnancy is a scary thing. But the forces that drive drug addiction are complex and enduring, and decades of careful study show that most drugs are not nearly as harmful to fetuses and infants as once thought. With the right support, babies exposed to cocaine or methamphetamine in the womb can recover quickly and develop normally. Researchers are still working to understand the long-term effects of prenatal opioid exposure. But doctors who treat them say that so far, these babies also seem to recover fully within the first few months of life, given the right support. (In fact, some doctors who treat addiction in pregnant women say alcohol and nicotine can be more damaging than illegal drugs to a developing fetus.) Increasingly — maybe because the forces that bind a mother and child are also complex and enduring — doctors are concluding that the best treatment for babies born with neonatal abstinence syndrome, the clinical term for postnatal opioid withdrawal, is not so different than the best treatment for all newborns: keeping them with their mothers, encouraging them to bond with one another and treating complications as needed.

The doctors and therapists who have worked with them say that most mothers who struggle with addiction still love their children, fiercely, and that while most of their pregnancies are unplanned, they are often very much wanted. Such mothers can recover, especially with programs that address underlying trauma and employ proven anti-addiction medications. But this is a slow, cumbersome process; most opioid addicts relapse an average of five or six times before achieving lasting sobriety. Locking up mothers as they engage in this struggle, separating them from their children and bombarding them with vitriol may satisfy an impulse to punish, but such measures have not managed to stop or even slow the current crisis.

“We love to hate these women,” says Barry Lester, a professor of psychiatry and pediatrics at Brown University who specializes in opioid addiction. “But our hatred is not accomplishing anything.”

A few days after Ms. Dischman’s overdose, in a news conference at the Pennsylvania state police barracks, Lt. Eric Hermick shared the details of her case with a throng of reporters and television cameras. She went into cardiac arrest en route to the hospital, he said. She was resuscitated and placed on a ventilator, and her baby was delivered via emergency C-section the following day. He did not know

the sex of the baby, he said, but he knew that it was “in bad shape,” and would likely suffer permanent damage, if it survived. He noted that both parents had histories of drug use and other crime, and that Ms. Dischman had been released from prison just five days earlier. Now, he said, the mother was facing a new charge: felony aggravated assault on an unborn child, with a possible upgrade to involuntary manslaughter if the baby died.

Pennsylvania law prohibits the prosecution of pregnant women for crimes against their own fetuses, but that hardly seemed to matter. Readers of the local paper were calling for Ms. Dischman to be sterilized, hung with piano wire or shot in the back of the head. Measured against those suggestions, a few decades in prison seemed almost kind. So did the prospect of arranging to have the couple’s two children adopted by other families. She should never see those kids again, the comments went. What kind of woman uses heroin when she’s seven months pregnant?

Ms. Dischman watched the news conference from her hospital bed, still groggy with pain. She could not remember relapsing, let alone overdosing. She knew only that her stomach had been cut open, that her baby was no longer inside her and that news reports were saying the infant was either dead or near death. Her mother reassured her that the baby — a girl — was O.K., just premature.

Ms. Dischman was taken to see her briefly, then taken back to jail, where she spent the next month doubled over from an infection around her C-section incisions and struggling to find out how her daughters were doing. Her mother kept assuring her by phone that the baby was going to be all right, but news reports suggested otherwise, and the sheriff who transported her to her first hearing did nothing to reassure her. “This is the one that killed her baby,” Ms. Dischman says he told his partner. She protested that, in fact, her daughter was alive. “Not for long,” she says he replied.

At night, she sobbed and prayed. “Please let my baby be O.K.,” she whispered over and over. “I’ll stay in here forever, they can give me the death penalty, just let my girls be O.K.”

While doctors saw Kasey Dischman’s relapse as the defining feature of a complex medical disorder, and prosecutors saw it as an abhorrent moral failure, Ms. Dischman came down somewhere in the middle. She had learned early in life that the only way to resolve a situation was to take responsibility for it. As a child, she was the one to take money from her father’s dresser and run to the store for food, something her mother and siblings

were too terrified to do even when they had nothing to eat. When he demanded to know where his money had gone, she says she confessed and took her punishment — an hour locked in the bedroom closet. She preferred a punishment she had earned to one borne of inaction and fear. She hated victimhood or anything smacking of self-pity.

And so she does not make excuses for her relapse. She admits she failed her children.

But, she says, some people now trying to crucify her also failed. She spent all but the first few weeks of her second pregnancy behind bars, where she says she was denied adequate prenatal care for her first trimester and was given 45 days in solitary confinement during her second. Butler County Prison did not respond to interview requests. As her release date neared, she says, she begged for help with housing and recovery, to no avail. “I told them straight out that I couldn’t return home because my child’s father was using,” she says. “I asked them to send me to rehab. I tried really, really, really hard to find someplace else to go. But nothing came through.”

What happened next shouldn’t have surprised anyone. Relapse and overdose are common among newly released inmates, in part because drugs that can be hard to get in prison are suddenly everywhere, and because months of abstinence lowers a person’s drug tolerance. What was a customary dose a few months back can suddenly be far too much.

If the system recognized its own failures as part of the problem, it gave no hint of remorse. The judge and prosecutor in her case, as well as the local newspaper, all made clear that they regarded the legal provisions protecting Ms. Dischman from being prosecuted for assault on her fetus as failures of the law, not safeguards of women’s rights. “The defendant is alleged to have done a senseless, selfish and heinous act,” the judge lamented when he dismissed the charge. “This court is nonetheless constrained by the clear, plain and unambiguous language of [the law].”

By then Ms. Dischman had been incarcerated for several months and had seen her children only twice. They had been placed in separate foster homes, and it had taken four months for her to be included in the jail’s family visitation program.

Ms. Dischman remained incarcerated on other charges after the felony case was dismissed. But prison officials expelled her from the family visitation program. “They

said she couldn’t have contact with them because they were victims of her crime,” says her attorney, J. Lansing Hills. “But they never filed a protective order, or petitioned the judge to exclude her from the program.”

Four more months passed while Mr. Hills fought to restore visitation. When he filed a lawsuit against the jail, Ms. Dischman was quickly paroled. It took several weeks more for a court to finally grant her weekly visits with both her children. By then, a court-appointed guardian was arguing that because she had not established a sufficient relationship with the children, her parental rights should be terminated and her children should be placed for adoption. “They kept her in jail all these months for something that the law specifically prohibits pregnant women from being charged with,” Mr. Hills says. “They prevented her from seeing her kids for almost that whole time. And now they are trying to take those kids away from her for good — including the daughter she raised from birth, for eight years — based on that timeline, that they controlled.”

Her younger daughter — who Ms. Dischman says is meeting all her developmental milestones — had been placed with Ms. Dischman’s cousin. Ms. Dischman had hoped the arrangement would be temporary, but she says everyone else seemed to regard it as permanent. “I think they just assumed that I would sort of go away,” she says. Her older daughter had been placed with strangers, and on each of their weekly visits would despair over the same question: Why didn’t any of their relatives want her? Why did they want only her baby sister?

Ms. Dischman knew abandonment. She says that when she and her brothers were young, their father sometimes dragged them out of bed in the dead of night, ordered them into his truck and deposited them 20 miles from home in one of the vast and vacant fields that dotted the perimeter of their universe. The aliens wanted them, he would say. She also knew what it was like to feel trapped in someone else’s home: Her sexual abuser would occasionally take her and her siblings for sleepovers. Ms. Dischman remembers how when she was little, she screamed and cried and begged her parents not to leave her there. She remembers the terror and rage and desperation she felt when they pulled away.

But she knew something else, too: It was the work of mothers, however battered or broken they might be, to bring their children home. Her own mother had located her and her brother whenever their father tried to abandon them, and had come pounding on Andy Lucas’s door when she first learned about their relationship. Those acts

may not have been enough to change the course of Ms. Dischman's life, but to her they were still evidence of a deep and abiding love. "My mom lived with a lot of terror, and she did not always have control over what happened to us," Ms. Dischman says. "But she still did everything she could, gave every last thing she had, for us kids."

There is another way to approach cases like Ms. Dischman's, and the balance of evidence suggests that it works much better than the incarceration-followed-by-neglect strategy that abetted her relapse.

Like Ms. Dischman, Katie Raftery found out she was pregnant while she was in jail for a petty crime. But unlike Ms. Dischman, Ms. Raftery was shepherded into Project RESPECT, a Boston Medical Center program dedicated to helping pregnant women and new mothers manage their substance use disorders through pregnancy and beyond. She received counseling, medication-assisted treatment and a plan for addressing any withdrawal symptoms that her baby might be born with and for confronting any custody issues that might arise as a result.

Instead of relapsing upon her release, she delivered a healthy full-term baby boy. Today, she works as a recovery coach at Massachusetts General Hospital's Hope Clinic — a new program, similar to the one that helped her. Experts say that such programs, which tackle both addiction and the social forces that can thwart recovery, cost less and produce more long-term recoveries than programs based on criminalization.

Criminalization tends instead to make recovery less likely, in part because courts are often poor arbiters of medical care. To take one example, doctors agree that the benefits of medication-assisted therapies — opioid substitution drugs, like methadone and buprenorphine, that can be prescribed to help manage cravings and withdrawal — far outweigh the risks to a developing fetus. Pregnant women on medication-assisted therapies are more likely to stay in recovery and deliver healthy babies than those who try to manage without medication. But judges, case workers and prison officials are known to order mothers and pregnant women off the medications as a condition of maintaining custody of their children. A report from the federal Department of Health and Human Services found that many of them do not understand how medication-assisted therapies work or that they are known to improve outcomes for pregnant women.

Addiction specialists across the country say that some pregnant women are so afraid to have prescriptions for methadone or buprenorphine in their medical records that

they are buying these medications on the black market, or worse — detoxing on the street without any support.

Sarah Wakeman, medical director of the Massachusetts General Hospital substance use program, remembers one recent patient who had been managing her opioid addiction with methadone for several months when she became pregnant. She was so worried that having this doctor-prescribed medication in her system would imperil her parental rights that, against her doctor's advice, she stopped taking it. "She relapsed a few months later," Dr. Wakeman says. "And the relapse was an overdose, and both she and her unborn baby died."

Doctors and lawyers say that, in fact, fear of prosecution or family separation often prevents addicted women from seeking any medical care. In Tennessee, a fetal assault law passed in 2014 and meant to nudge women into treatment by threatening them with jail time was left to sunset after a two-year trial run, in part because multiple accounts emerged of pregnant women fleeing the state, giving birth at home — or, in at least one case, on the side of a road — all to avoid the public hospital. "We started out saying we would curb drug use and promote treatment and care," says Wendy Bach, a University of Tennessee College of Law professor who is working on a book about the ill-fated law. "We ended up deterring people from treatment while doing basically nothing to curb use."

And not only does criminalization deter women from seeking treatment — it also diminishes the quality of treatment itself. "The more we double down on the idea that pregnant women who struggle with addiction are terrible people and terrible mothers, the easier it becomes for doctors, social workers, judges and everyone else to treat them terribly," Dr. Wakeman says. "When we criminalize women, we make them scapegoats for all of these large structural forces and societal failures that create poverty and give rise to addiction in the first place."

A final custody hearing is drawing near for Ms. Dischman, who has been sober for several months. Her counselors, parole officers and public defenders are all rooting for her, but she's having a hard time. She misses her children. Her criminal record makes her ineligible for several public assistance programs. And the unrelenting local media attention to her case has made it hard for her to find and keep a job. Night terrors that hadn't troubled her since childhood have returned with a vengeance.

What she wants more than anything is a fresh start. She knows that she could make a go of it again — staying sober, being a mom to her girls, maybe even getting back into

real estate — if given the chance. But she can't shake the feeling that she's been set up to fail. She remembers once hearing a police officer say that all junkies are worthless, that he'd rather inject an opioid overdose reversal drug into the dirt than use it to save one of them. "They don't want me to recover from this," she says. "Because if I do, if I make it through and I do all right, then what does that say about them, and about how they trashed me?"



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