

# Clearinghouse REVIEW

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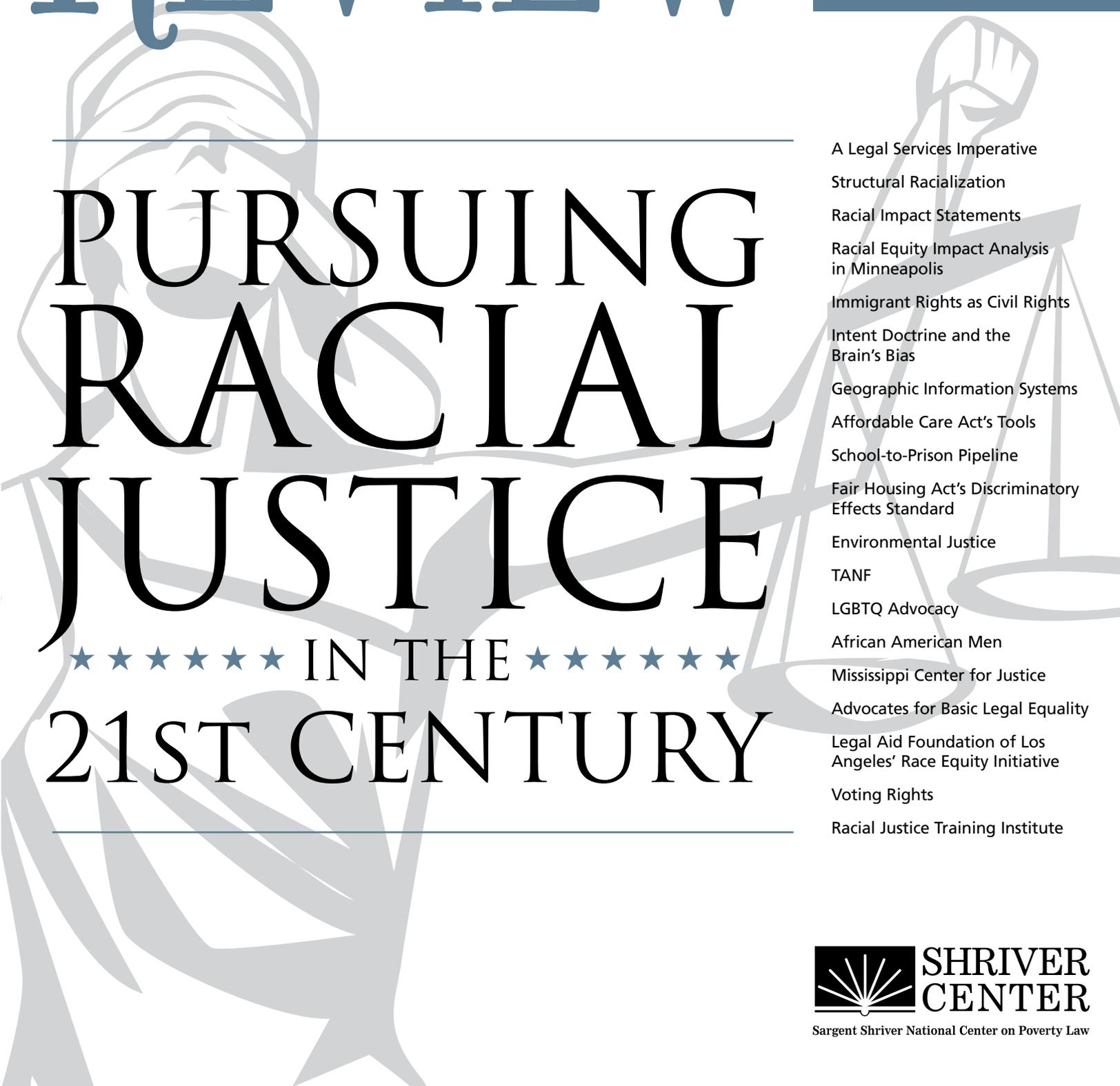
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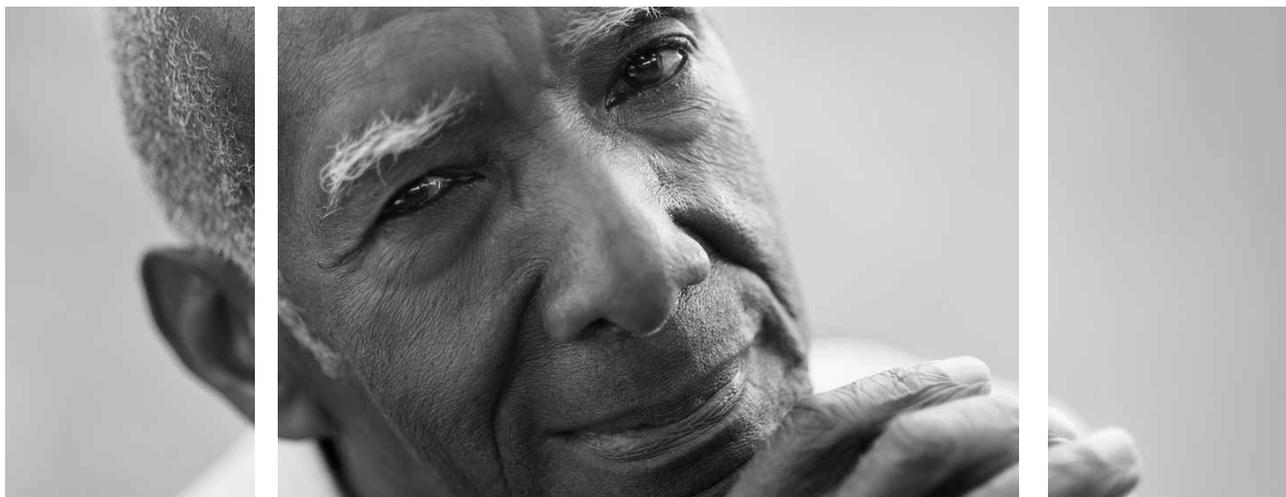
## PURSUING RACIAL JUSTICE

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21ST CENTURY

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A Legal Services Imperative  
Structural Racialization  
Racial Impact Statements  
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in Minneapolis  
Immigrant Rights as Civil Rights  
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Voting Rights  
Racial Justice Training Institute



# ADVOCACY FOR AFRICAN AMERICAN MEN BEGINNING A CONVERSATION

By Margaret Stapleton

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**A**re African American men underrepresented in your program’s client statistics and advocacy priorities? Are you uneasy that you focus too little advocacy attention on the legal issues that low-income African American men confront? If an African American man seeks help, is your office’s response likely to be “We’re so sorry; we don’t handle that kind of case and we don’t really know anyone who does”?

You are not alone. Other than the Supplemental Nutrition Assistance Program (SNAP, or food stamps), few public benefits are available for nondisabled adults, and so benefits advocates have little to offer. For many advocates in Legal Services Corporation–funded programs, restrictions make advocacy off limits in areas that greatly affect African American men, such as jail and prison conditions and criminal charges.

Nonetheless you know that low-income African American men are in trouble on many fronts. You see the popular press and academic writing describe their situation by using words that flag their distress—“endangered species,” “on the verge of irrelevancy,” “out of school, out of work,” “more likely to be in prison than in college,” and the grimmest of all: “homicide is the leading cause of death for African American men between the ages of 15 and 34...[,] 19 times higher for young black men than young white men.”<sup>1</sup> You knew all that even before Trayvon Martin was killed, his shooter was acquitted, and President Obama responded with heartfelt words.

With all this in mind, you also know that African American men may be seen as the cause of your more traditional clients’ legal problems. These men may be the abusers;

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<sup>1</sup>JOHN A. RICH, *WRONG PLACE, WRONG TIME: TRAUMA AND VIOLENCE IN THE LIVES OF YOUNG BLACK MEN*, at ix (2009).

their contacts with the criminal justice system may get their wives, girlfriends, or mothers threatened with eviction; they may not be paying child support; they may be thought to be gang-involved, making their being around their children dangerous (think of the infants, toddlers, and preschoolers dead from a bullet perhaps intended for their fathers). And you may have heard more about (and be put off by) the “fathers’ rights” movement that is largely made up of white middle- or even upper-income men who are unhappy with how they have fared in divorce proceedings than you have heard about the “responsible fatherhood” efforts of low-income African American fathers to be involved in their children’s lives.<sup>2</sup>

Having spent four decades working in civil legal aid, much of it focusing on issues affecting low-income African American men, I have two categories of suggestions to help you out of your quandary.

First, read the following four books that well and movingly describe the situation in which African American men find themselves in twenty-first century America.<sup>3</sup>

John A. Rich’s *Wrong Place, Wrong Time: Trauma and Violence in the Lives of Young Black Men* (2009) will hone your insight into how violence—gunshot wounds but also stabbings and assaults—traumatizes African American men both physically and psychologically and will introduce you to a promising route for reducing such violence. Rich’s research and experience have convinced him that the trauma of violence fuels the cycle of violence; his response is the Center for Nonviolence and Social Justice at the Drexel University School of Public Health.

Kathryn Edin and Timothy J. Nelson’s *Doing the Best I Can: Fatherhood in the Inner City* (2013) will acquaint you with what low-income African American men themselves have to say about their lives, their roles as fathers, and their rela-

tionships with their children, and in the process the book likely will make you examine and then abandon many of your assumptions.

*Social Work with African American Males: Health, Mental Health, and Social Policy*, edited by Waldo E. Johnson Jr. (2010), collects eye-opening data, scholarship, and policy implications on a wide range of challenges and barriers faced by African American men. The book covers topics such as the men’s individual and family roles (as adolescent fathers, with their aging mothers, as respondents in child support cases, as uncles, and as adolescent peers); education (after-school programs and student athletes); mental and physical health (depressed adolescents, stress, need for and use of health care, suicide, HIV/AIDS); and violence and incarceration.

Michelle Alexander’s *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), a “must read” for anyone advocating for African American men, weaves together history, case law, sociology, criminology, and psychology to make the case that the result of the war on drugs is a new racial caste system—“the new Jim Crow”—which removes African American men from mainstream society and condemns them (and their families and communities) to a lifetime of poverty and exclusion. Alexander describes how judicial decisions have made it nearly impossible for defendants to challenge the criminal justice system’s racial profiling: not in arrests, not in charges, not in jury composition, not in sentencing. She challenges the civil rights community to move beyond affirmative action and confront the racial divisions and resentments that have given rise to this mass incarceration.

Second, consider advocacy in four areas in which work is particularly timely.

**Health Coverage.** The Affordable Care Act’s “newly eligible” catchall category for Medicaid eligibility should have made everyone under 138 percent of the fed-

<sup>2</sup>See National Fatherhood Initiative, [www.fatherhood.org](http://www.fatherhood.org).

<sup>3</sup>In the interest of full disclosure I note that I know and like some of the authors I recommend.

eral poverty level eligible for Medicaid by January 1, 2014—including low-income African American men not living with their children, few of whom were ever previously eligible. The U.S. Supreme Court sidetracked, but did not derail, this expansion when it held that the federal Medicaid agency could not withdraw Medicaid funding from states that did not extend Medicaid to this newly eligible group, thereby making the expansion in effect a state option.<sup>4</sup>

If your state has not yet extended Medicaid, connect with others working on Medicaid expansion and digest the information in the National Health Law Program's website and its Medicaid Expansion Toolbox.<sup>5</sup> But keep in mind that expansion advocacy is a bit of a minefield, African American men are not everyone's poster children, and the better course is to include them in the wide-angle picture as one group among many who need the newly available coverage.

In the twenty-plus states that are extending coverage, Medicaid eligibility will improve immensely the lives of low-income African American men who, by and large, have been uninsured as adults. (Think about the shot, stabbed, or beaten men Dr. Rich introduces us to in *Wrong Place, Wrong Time*. Likely uninsured when they arrived in the emergency room, and if they survived without paralysis or brain injury, they likely left the hospital still uninsured because they did not meet the "totally and permanently disabled" Medicaid category. Often this lack of insurance would make follow-up treatment haphazard. Medicaid offers comprehensive health services and, increasingly, the all-important care coordination, and so advocacy around enrollment is hugely important in expansion states.

However, getting African American men to apply and follow through may be challenging due to three likely barriers. First, many men, having applied in the past and

been determined ineligible, will doubt that Medicaid is for them. Second, and a bigger problem, many men, fearing being reported to the child support agency or law enforcement, will be reluctant to reveal anything about themselves to a government program. Advocates should work with outreach and enrollment agencies and groups to emphasize that applicants' information will not be shared with other government or nongovernmental agencies. Third, some men may have difficulty providing evidence of their financial and nonfinancial eligibility criteria. They may have no income or be paid in cash, and they may not have documents establishing identity, citizenship or noncitizen status, and state residency. Pay close attention to the eligibility and enrollment policies and procedures of your state Medicaid agencies and try to shape them by, for example, participating in formal or informal rule-making and advisory groups. (See "Identity Documents" below.) If your program tackles these issues proactively starting now, you will smooth African American men's path to Medicaid eligibility.

**Criminal Justice.** The magnitude of what is wrong with how the criminal justice system treats African American men, largely but not entirely because of the war-on-drugs and tough-on-crime waves of the last thirty years, is almost immobilizing. The system needs reform from start to finish, front to back, top to bottom. But, for civil lawyers, a good place to start is with two tasks. First, find ways to eliminate or minimize the "collateral consequences" of criminal records—the barriers and prohibitions concerning employment, housing, professional licensing, public benefits, and voting that people with criminal records face. Second, find ways to stop the courts and corrections systems from imposing more and more of the costs of prosecution and imprisonment on defendants and prisoners.<sup>6</sup> These two broad areas are, frankly, somewhat hot, having

<sup>4</sup>*National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012).

<sup>5</sup>See National Health Law Program, NHeLP's Medicaid Expansion Toolbox (2010), <http://bit.ly/NOQuCO>.

<sup>6</sup>On September 12, 2013, the Sargent Shriver National Center on Poverty Law sponsored a webinar on this topic entitled "Trapped: The Effect of Criminal Debt on Reentry." Readers can access the archived webinar at <http://bit.ly/1eX0a2F>.

caught the attention of public officials and policymakers as well as advocates.<sup>7</sup> In the advocacy community, exemplary work is ongoing under the leadership of the National Employment Law Project and the Brennan Center for Justice, among others.

Closer to home, spend some time talking with public defenders to get the lay of the land on the criminal side.<sup>8</sup> Talk extensively with employment and training agencies and providers of services to the homeless about the experiences of their clients with criminal records—and offer training on, for example, how to obtain and read criminal records, distinguish truth from myth about the collateral consequences of a criminal record, how to mitigate the impact of records (pardons, expungement, sealing, waivers, and other state-law remedies), and the all-important Equal Employment Opportunity Commission Title VII Guidance on Use of Arrest and Conviction Records in Employment Decisions and federal Fair Credit Reporting Act protections against errors in criminal records purchased from data brokers by employers, landlords, and others doing background checks.<sup>9</sup> You can help equip these frontline agencies to include records issues in their advocacy for lowering barriers and debt burdens and fighting efforts to make things worse (e.g., “crime free” housing ordinances).<sup>10</sup> Frontline agencies also will likely be pleased to refer their clients with criminal records and debt issues for individual representation. Voila! You now have a criminal justice practice.

**Child Support.** Federally funded, state, and locally operated child support enforcement programs are heading in a good direction. Originally focused on “welfare avoidance” and “welfare benefits repayment,” they forced low-income mothers to “cooperate” in establishing parentage and obtaining support from often destitute fathers and entered wildly unrealistic support orders (e.g., 150 percent of the minimum wage) against those men, whether or not they were employed. Unable to pay, men piled up huge arrearages and often withdrew from their children’s lives and entered the underground economy, creating a lose-lose situation for all.

In 2009 a longtime advocate from the legal services community, Vicki Turetsky, became commissioner of the federal Office of Child Support Enforcement; she is leading state and local agencies to set realistic and fair orders, modify orders quickly when circumstances change, modify support orders downward for incarcerated parents, reduce child-support debt owed to the government, calibrate use of the extensive set of collection tools these agencies have, and assist parents in establishing parenting time orders.<sup>11</sup> However, acceptance of this new family-friendly approach varies widely among state agencies and their frontline staff. Even more relevant here, the experiences of African American men with the child support system has often been so negative that many choose to avoid all contact with the system, even when avoidance makes things worse.

<sup>7</sup>The American Bar Association conducted an inventory of state-imposed collateral consequences (see National Institute of Justice, Office of Justice Programs, U.S. Department of Justice & ABA Criminal Justice Section, National Inventory of the Collateral Consequences of Conviction (n.d.), <http://bit.ly/PrzdpT>). U.S. Attorney General Eric Holder established a cabinet-level Reentry Council to examine barrier removal (see Amy L. Solomon, *The Attorney General’s Reentry Council*, *NIJ JOURNAL* No. 270, June 2012, <http://bit.ly/13tGv2u>).

<sup>8</sup>See Hong Tran, *Bridging the Divide Between Civil Legal Aid Lawyers and Public Defenders*, 47 *CLEARINGHOUSE REVIEW* 30 (May–June 2013).

<sup>9</sup>See Federal Interagency Reentry Council, *Reentry Mythbusters* (n.d.), <http://bit.ly/14GbNJC>; Todd Belcore, *People with Criminal Records: Resisting Practices that Undermine Self-Sufficiency, Public Safety, and Balanced Budgets*, 46 *CLEARINGHOUSE REVIEW* 435 (Jan.–Feb. 2013).

<sup>10</sup>See Emily Werth, Sargent Shriver National Center on Poverty Law, *The Cost of Being “Crime Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* (2013), <http://bit.ly/148vQOK>.

<sup>11</sup>See Office of Child Support Enforcement, Office of the Administration for Children and Families, U.S. Department of Health and Human Services, *What Is the Office of Child Support Enforcement (OCSE)* (n.d.), <http://www.acf.hhs.gov/programs/css>; Kirsten D. Levingston & Vicki Turetsky, *Debtors’ Prison: Prisoners’ Accumulation of Debt as a Barrier to Reentry*, 41 *CLEARINGHOUSE REVIEW* 187 (July–Aug. 2007).

Your involvement at the advisory and policy level can begin to change this dynamic. First, learn how African American men experience the child support system by spending time with fathers, perhaps at responsible fatherhood programs, or at employment and training agencies and homelessness programs.<sup>12</sup> Familiarize yourself with the materials available from the Center on Family Policy and Practice.<sup>13</sup> Then use the men's stories to frame suggestions for changes in state child support procedures. Attend meetings of your state child support agency's advisory council; volunteer for official membership and for subcommittee work, and bring the voices of low-income fathers into the discussion.

**Identity Documents.** People without government-issued photo identification find navigation of daily life difficult. Learn your state's identity document labyrinth. Share the information on how to help clients get these documents, zero in on laws and policies that make it impossible, unnecessarily burdensome, or too expensive for people to obtain the

documents they need, and work for law or policy change. Be prepared for the messiness of some people's lives, particularly those who have used aliases, and for the apprehension that many people, particularly African American men, feel at the notion of sharing information. They may fear that obtaining identification will trigger arrest for child support arrears, unpaid debts arising out of the criminal justice system, or outstanding warrants. This advocacy may be challenging, but without evidence of identity people will continue to be left out.

This list of advocacy suggestions is not exhaustive. Nor do I broach the pressing issue of violence, especially gun violence, although Dr. Rich's book offers good ideas. But I urge you to consider seriously ways to increase legal advocacy on behalf of African American men and to promote this work in your programs. Such advocacy will not only improve these men's lives but also have multiplier effects on the lives of their families and communities.

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<sup>12</sup>See U.S. Department of Health and Human Services, Promoting Responsible Fatherhood (July 21, 2011), <http://1.usa.gov/1vKKmZ>.

<sup>13</sup>I am a member of the board of the Center on Family Policy and Practice, [www.cffpp.org/](http://www.cffpp.org/).



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