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The Flawed Analysis of Decriminalized Prostitution in Rhode Island by Cunningham and Shah

By Margaret Brooks and Donna M. Hughes

From 1980 to 2009, Rhode Island had decriminalized prostitution if the activity took place indoors. The lack of regulation or criminalization of prostitution prohibited effective investigations into sex trafficking, although there was evidence of the operation of organized crime groups and individual traffickers (pimps). With the passage of three new laws on human trafficking, prostitution, and the prohibition on minors working in adult entertainment, there has been increased police investigation and prosecution of traffickers. Cases have shown that traffickers exploit minors, developmentally delayed teens, and vulnerable young women.

Recently, an unpublished paper by two professors claiming that decriminalized prostitution benefited the population of Rhode Island has received national media coverage.

Scott Cunningham from Baylor University and Manisha Shah from the University of California, Los Angeles released a paper entitled “Decriminalizing Prostitution: Surprising Implications for Sexual Violence and Public Health” (August 2013). Their results show declining rates of rape and gonorrhea in R.I. after prostitution was decriminalized.¹

We believe their analysis and conclusions are flawed for a number of reasons.

Their analysis focuses on the supposed benefits of decriminalized prostitution on the general Rhode Island population. It does not include an analysis of the harm and costs to the women and girls exploited and trafficked into prostitution. Their premise is that the women and girls in prostitution in Rhode Island are consenting and acting of their own free will uncontrolled by madams, pimps, traffickers, or organized crime groups. They do not try to measure or analyze ill effects or violence to which women in prostitution are subjected.

In fact, this is a very old fashioned misogynous view that a subset of women and girls should be set aside from the general population to be sexually used by men and that society as a whole benefits from the sexual exploitation of this subset of the population. The health, well-being, and freedom of this group of women and girls is always ignored. They are supposed to absorb the violence of some men for the benefit of other women.

¹ Ben Leubsdorf, “[Researchers: Decriminalized Prostitution in Rhode Island Led to Fewer Rape, Gonorrhea Cases](#),” Wall Street Journal **Real Time Economics**, July 14, 2014.

<http://blogs.wsj.com/economics/2014/07/14/researchers-decriminalized-prostitution-in-rhode-island-led-to-fewer-rape-gonorrhea-cases/>

The following is a more detailed analysis of the Cunningham and Shah report.

First, it's inaccurate to only look at R.I. rates of rape and gonorrhea without considering the same statistics for surrounding states, such as Massachusetts and Connecticut. When prostitution was decriminalized in R.I. but illegal in surrounding states, R.I. became a magnet for prostitution activities throughout the region. R.I.'s exceptionally small size made it quick and easy for people to travel across the borders, to and from other states.

Prior to November 2009, sex buyers traveled to R.I. because prostitution was legal. In order to meet the sex buyers' increasing demand for prostitutes, as the sex industry grew, pimps trafficked vulnerable women and girls into the state to meet the demand for more prostitutes. Because R.I. was essentially a sex tourist destination, statistics in R.I. cannot be viewed in isolation or analyzed without considering the same statistics in surrounding states.

Consider the inter-state complication of gonorrhea reporting. If an out-of-state sex buyer contracted gonorrhea from a R.I. prostitute and then was treated several days later by a doctor in his home state, his case would be reported as occurring in the sex buyer's home state. This type of reporting difference could be significant if there were many out-of-state sex buyers seeking treatment. To the extent this type of inter-state travel took place, R.I.'s gonorrhea rates, following decriminalization, would appear on the surface to be lower than the actual infection rate in R.I. In other words, the authors' decision to look only at gonorrhea statistics for R.I. means they likely overstated the "benefits" of decriminalizing prostitution.

Second, there are problems with some of the numbers used by the authors in this study. The time frame does not follow the actual time of decriminalization of prostitution in R.I. Cunningham and Shah chose to start their analysis in 2003, claiming this to be the effective date when R.I. decriminalized indoor prostitution. However, indoor prostitution was decriminalized in R.I. by law in 1980, so one could argue that 1980 should be used as a starting point. Then in 1998 the R.I. Supreme Court heard the case STATE v. Robert J. DeMAGISTRIS. This case publicly defined the streetwalker vs. indoor prostitution "loophole." One could also ask why the authors did not use 1998 as their starting date. In fact, the year they did chose to begin their study, 2003, was an anomaly in terms of reported forcible rapes in R.I. The 46.9 percent rate was abnormally high, as shown in the FBI's Uniform Crime Statistics for R.I. and for the U.S in the years 1998-2012. (See Table 1.)

By choosing 2003, which has an exceptionally high rate, the drops in subsequent years appear to be more significant. In fact, the authors do not identify any plausible reasons for why forcible rapes jumped so much in R.I. in that one year, 2003. Yet they boldly assert that the subsequent declines in forcible rapes in the next few years were caused by the decriminalization of prostitution. (Notice that forcible rates of rape in R.I. were actually rising in 2008 and 2009.)

The authors only considered data for the years 2003 through 2009, but there is no good reason given for stopping in 2009. Data is available through 2012. Shouldn't they have wanted to report what happened to these variables when prostitution became illegal again? The chart shows that in 2012, the rate of forcible rape in R.I. was actually lower than it was in the years 2004 and 2005 when prostitution was legal in RI, and it was approximately the same as it was in 2009 (prostitution was legal for almost all of that year because the law passed in November 2009).

Table 1: Rates of Rape in Rhode Island and the U.S. from 1998 to 2012.

| Year | Forcible Rapes in RI | Forcible Rapes in US |
|------|------------------------------|------------------------------|
| | Rate per 100,000 inhabitants | Rate per 100,000 inhabitants |
| 1998 | 35.5 | 34.5 |
| 1999 | 39.5 | 32.7 |
| 2000 | 39.3 | 32.4 |
| 2001 | 39.3 | 31.8 |
| 2002 | 36.9 | 33.0 |
| 2003 | 46.9 | 32.3 |
| 2004 | 29.6 | 32.2 |
| 2005 | 29.8 | 31.7 |
| 2006 | 26.7 | 30.9 |
| 2007 | 24.2 | 30.0 |
| 2008 | 26.4 | 29.3 |
| 2009 | 27.3 | 28.7 |
| 2010 | 28.1 | 27.5 |
| 2011 | 28.9 | 26.8 |
| 2012 | 27.4 | 26.9 |

Source: FBI Uniform Crime Reports <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Crime>

It's insightful to take a longer view on both ends, and look at the numbers from 1998 to 2012. R.I. is just above the national average in these two "endpoint" years. While there were ups and downs across some years, there was essentially no relative change in the number of reported rapes in R.I., as compared to the national average, at the beginning and end of this 14-year period.

There are other inaccuracies. Cunningham and Shah's Table 1 Summary Statistics (p. 35) lists R.I.'s total population as over 12 million, yet it is only about 1 million.² If the authors are off by 11 million on this figure, how can the rest of their numbers be trusted?

Third, the authors' explanation for why they included "forcible rape" as a variable is not valid. The authors hypothesized that some men may go to prostitutes as a substitute for raping other women. However, it is well known that rape is a crime of power and violence, not sexual desire. Men who want to rape other women would undoubtedly also want to rape prostitutes. If prostitutes are raped or battered, they are less likely to report these crimes than non-prostitutes because police, judges and juries seldom consider them credible witnesses. (This is discrimination, but that's what happens to this stigmatized population.) In effect, the same amount of forcible rape (or more) could have taken place in R.I. during the years of decriminalization, but the attacks may have happened to the women and girls in prostitution who had lower reporting rates. The rape of any woman is wrong. And it is wrong to expect one group of women absorb the violence for another.

Fourth, the authors use a business model to discuss prostitution, but apparently they are not concerned about women who are controlled by pimps, traffickers or organized crime groups or underage girls who are frequently exploited in prostitution. In the authors' view, pimps and traffickers are not called perpetrators or criminals, but are referred to as "property owners" and "firms."

The authors assume that the women and girls in prostitution are the managers and owners of the properties where they are in prostitution. Research reveals that is seldom the case. The massage parlors, strip clubs, and residential brothels are outside the control of the women engaged in commercial sex. The following quotes describe the money that is spent on security.

"Once the activity is decriminalized, sex workers do not have to worry about being arrested, harassed by police, etc. and *firms can choose to invest since they now have*

² <http://quickfacts.census.gov/qfd/states/44000.html>

secure property rights." (p. 5) (Emphasis added).

"... decriminalization increases the return on capital by providing well-defined property rights to owners. Firms can use additional revenue to invest in locks, security cameras and security personnel to reduce the opportunity of premeditated client violence (Brents and Hausbeck, 2005)" (p. 5).

Cunningham and Shah do not ask why a safe, non-violent, legal business has such a high need for security. They do say that the high security provides protection from "premeditated client violence," which seems to indicate the authors recognize the high-level of violence that sex buyers bring to brothels.

Fifth, the authors' perspective appears to be skewed toward what they see is the unexamined right of men to buy safe, "clean" sex with prostitutes. They refer to women and girls coming into prostitution as "new entrants" and argue that the new entrants are less likely to be infected with sexually transmitted infections. They do not consider that the new entrants, who they refer to as "lower STI risk sex workers" and "lower risk sex workers" are often minors. Research and the experience of police and service providers who work with women and girls in prostitution and sex trafficking now recognize that the average age of entry of a girl into prostitution is the teen years, often as young as 13 to 14.

"Assuming a net increase in the number of indoor sex transactions, decriminalization could increase the scale and growth rate of a gonorrhea epidemic. However if decriminalization shifts transactions indoors to *lower STI risk sex workers* and/or draws in *lower risk sex workers*, then decriminalization may reduce an epidemic....Negative effects on STI epidemics could occur if new entrants into the sex work network are lower risk thus diluting the propagation mechanisms fueling the epidemic..." (p. 7). (Emphasis added)

In the previous excerpt, Cunningham and Shah acknowledge the growth of the sex industry during decriminalization, but see this only as positive because it attracts "cleaner" women and girls to prostitution.

Sixth, they make race-based statements that are offensive and not supported by their data. According to their own Table 14, Whites are more likely to have gonorrhea in R.I. than Blacks, yet in the same paragraph, they conclude that having more White (and Asian) women entering prostitution lowers the risk pool for gonorrhea.

"Table 14 shows the mean rates of female gonorrhea in Rhode Island from 1985-2009. Asian women have .327 cases of gonorrhea, white women 12.66 cases, whereas Hispanic and Black women have 4.66 and 11.86 cases, respectively. Therefore, it is clear that more White and Asian women entering the market results in an overall lower risk pool" (p. 26-27).

"Post-decriminalization we observe significant (sic) entry of White and Asian workers, and these races have the lowest gonorrhea prevalence. Therefore, post-decriminalization men are more likely to match with a safe (i.e. gonorrhea free) sex worker which could result in overall reductions in gonorrhea incidence" (p. 26).

Their perspective continues to be biased toward a world view that a public health goal is to enable men to buy sex with women with few personal risks of acquiring gonorrhea, and with callous disregard for the health of the women who are being prostituted:

Seventh, in the discussion about transmission of gonorrhea, Cunningham and Shah use an outdated 1967 source to justify their claim that women, rather than men, are to be identified as the vectors of gonorrhea transmission.

"In fact, Wren (1967) concludes that \there is no doubt that [prostitutes], as a group, must be the largest source of continual [gonorrhea] infection and reinfection in any community" (p. 11).

This misogynist view (i.e. that women are dirty) implies that men need to be protected from being infected by women in prostitution and ignores how the women themselves become infected (i.e. from men). The authors did not consider that men are more likely to transmit gonorrhea to women than vice versa.

Eighth, this study appears to be geared toward justifying men's rights to sexually exploit women and girls in R.I. They did not consider male-to-male prostitution in R.I., even though it did take place during the 2003-2009 period, and even though male prostitution is also a means of transmitting gonorrhea, as well as other STDs. The authors specifically rejected using syphilis or chlamydia because these are associated with men having sex with men (MSM), and they wanted to look at heterosexual prostitution:

"Gonorrhea is chosen as opposed to syphilis or chlamydia because the demographics of

gonorrhea make it more suitable for a study of this kind given that its movements suggest a heterosexual vector, compared to syphilis which is almost exclusively concentrated among men-having-sex-with-men community (CDC 1997, 2010)" (p. 11).

Ninth, the authors claim that indoor prostitution is safer than street prostitution.

"Therefore, risky sex amongst indoor transactions declined following the decriminalization. This is consistent with other empirical evidence showing that prostitutes who work indoors practice safer sex and are less likely to contract and transmit STIs (Seib et al., 2009; Seib, Fischer and Najman, 2009; Gertler and Shah, 2011). In addition, evidence from Nevada suggests that employees report that they feel safe, are free to come and go, and are bound only by their contract in legal brothels. Of the workers, 84 percent said that their job felt safe. Workers report that they felt safe largely because the police, employers and co-workers were there to protect them (Brents, Jackson and Hausbeck, 2009). Conditions like these also promote safe sex as workers feel more empowered to reject risky sexual propositions" (p. 27).

Violence against women in prostitution has been studied by numerous researchers. While no one denies the risk to women engaging in prostitution on the street, the relative safety of indoor prostitution is often exaggerated. Women are still assaulted and raped indoors. Many people assume that the brothel managers or pimps will intervene to assist a woman who is being attacked, but many survivors of prostitution say that is not always the case. Also, there is considerable overlap between indoor and street prostitution. Women often move back and forth and sex buyers also look for and use women and girls in different venues.

A detailed discussion of this topic is beyond the scope of this brief bulletin response, but one empirical study in Chicago looked at violence in indoor and outdoor prostitution venues.³ The researchers concluded that "Women outdoors generally reported higher levels of physical violence, but women in indoor venues were frequently victims of sexual violence and being threatened with weapons. ... women across prostitution venues are often victims of violence." They called for more attention on the sex buyers and their motivations for violence, which Cunningham and Shah ignore in their paper.

Tenth, while standard economic policy decision-making processes involve a consideration of both costs and benefits, Cunningham and Shah have failed to do this. They have purported to find "benefits" of alleged reductions in rapes and gonorrhea in R.I. after indoor prostitution was

³ Jody Raphael and Deborah L. Shapiro, "[Violence in Indoor and Outdoor Prostitution Venues](#)," *Violence Against Women Journal*, Vol 10, Issue 2, February 2004.

decriminalized. In their conclusion, they make this general policy recommendation for decriminalized prostitution, based only on alleged “benefits:”

“This study provides the first causal estimate of the impact of decriminalization on sexual violence and public health outcomes. The results suggest that decriminalization could have potentially large social benefit for the population at large, not just sex market participants” (p. 29).

Yet in making this blanket recommendation, Cunningham and Shah have conveniently decided to not mention any of the costs of prostitution that Cunningham himself has acknowledged in the past to be “substantial” and “unavoidable.” In 2009 Cunningham co-authored a paper entitled “Prostitution 2.0: The Internet and the Call Girl,”⁴ in which he clearly identified the costs of prostitution as follows:

“The provision of prostitution services has always involved substantial costs, both pecuniary and non-pecuniary. No doubt this is why... only about 2 percent of American women admit to having engaged in prostitution at any point in their lives (Smith, 2006), despite the very high wages typically available... Offering sex for compensation, especially repeatedly, exposes the prostitute to a high probability of sexually transmitted infection (Philipson and Posner, 1993), and may lead to severe psychological and emotional harm (Brooks, 2006; Roberts, 2007). While the availability of birth control has reduced the likelihood of unwanted pregnancy, it has not fully eliminated it. Moreover, prostitutes face the potential for arrest and imprisonment, and a substantial risk of violence from customers and others (Brewer et al., 2006). If discovered by friends and family, prostitutes suffer social stigma and reduce social capital (Rasmusen, 1996; Giusta, Tommaso and Strom, 2008), including the lower marriage probability that Edlund and Korn (2002) identify as a crucial opportunity cost driving wages...many of these costs are unavoidable, regardless of the state of technology...” (p. 5)

Conclusion:

The Cunningham and Shah analysis of decriminalized prostitution contains many conceptual and data flaws.

⁴ Scott Cunningham and Todd D. Kendall, “Prostitution 2.0: The Internet and the Call Girl,” 2009. To access this paper online, input the name “Cunningham” into the search box on this web site <http://www.iza.org/search>

A more detailed and in depth analysis of this paper is needed. The assumptions and findings need to be compared to more recent research, such as the empirical study (Cho et al. 2012) entitled “Does Legalized Prostitution Increase Human Trafficking?” The researchers conclude that “On average, countries where prostitution is legal experience larger reported human trafficking inflows.”

This bulletin is our quick response to the most significant claims made by Cunningham and Shah. In 2009, Rhode Island recriminalized prostitution, as well as passing a comprehensive human trafficking law and a law banning minors from working in adult entertainment establishments. While criminalization of prostitution has problems associated with it, most specifically, the continuing law enforcement practice of arresting women sellers of sex instead of the male buyers of sex, it still appears to be in the best interest of a state and women as a whole to ban the legal operation of the sex industry. When prostitution is prohibited, pimps, traffickers, and property owners who rent to pimps and traffickers are criminalized.

There is a growing movement to hold sex buyers accountable for engaging in illegal activity, so that women sex sellers are not primarily targeted by law enforcement. Whatever the drawbacks to criminalization of prostitution, it is still better than decriminalization where there is no official oversight over the sex industry and pimps and traffickers are able to operate freely.

Beyond the glaring conceptual and data flaws, the Cunningham and Shah paper presents an increasingly outdated political view in which the sex industry is allowed to operate with impunity, where men have the right to buy “clean” sex, and the false belief that respectable women will be protected from rape by having another less respectable group of women absorb the rapists’ sexual violence.