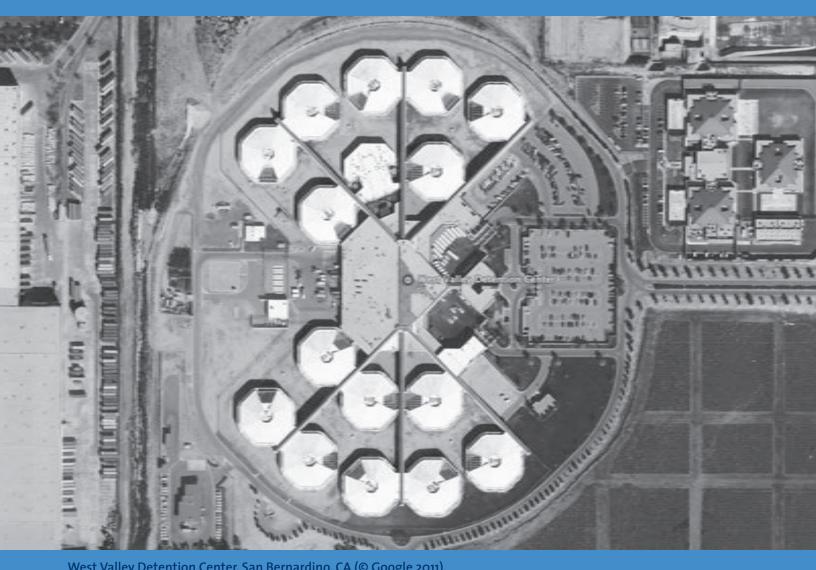
THE LIMAN REPORT

Arthur Liman Public Interest Program

Yale Law School

Fall 2015



West Valley Detention Center, San Bernardino, CA (© Google 2011).

Courtesy of Joe Day, Corrections and Collections: Architectures for Art and Crime (Routledge 2013)

Detention on a Global Scale: Punishment and Beyond

The heroes of the legal profession are not the lawyers who achieve celebrity status by self-promotion or mugging for the cameras but the often unsung and young lawyers (some just out of law school) who brought about the social revolution in this country that led to the repeal of the Jim Crow laws; the lawyers in Connecticut who won the case establishing a right of privacy to keep government out of personal decisions relating to reproductive freedom; and the lawyers who, for little or no fee, take on the defense or appeals in cases for indigent defendants who have no means of obtaining effective representation. These are the lawyers against whom we should measure ourselves.

—Arthur Liman, Lawyer: A Life of Counsel and Controversy (1998)

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Detention on a Global Scale: Punishment and Beyond

A record number of people—more than 11 million—are in detention worldwide. The costs and harms of the overuse of incarceration have raised grave questions about its morality and legality. Calls are emerging from many quarters to reform detention practices to ensure that they reflect democratic values and respect human rights.

Reflective of Arthur Liman's commitment to a just, limited, and humane criminal justice system, a focus of the Arthur Liman Public Interest Program is understanding the uses and implications of incarceration in the United States. During the past few years, we have examined the challenges that distance from home imposes on prisoners and their families, which we have termed "isolation by place." In addition, we have done research on the problems flowing from the segregation of individuals while they are incarcerated, or "isolation by rule."

In its eighteenth year, the Liman Public Interest Program has continued to expand our work on incarceration through collaborations new and old. In April 2015, the Liman Program and the Robert L. Bernstein Human Rights Fellowship co-hosted a joint colloquium. Our topic was *Detention on a Global Scale: Punishment and Beyond*. The conference brought together scholars, former prisoners, corrections administrators, and advocates from Western Europe, Africa, Asia, and the Americas, who joined the Liman, Bernstein, and Robina Fellows and Yale faculty and students to explore the theory and practice and future of confinement.

A sense of the exchanges comes from brief essays, excerpted below, by some of the participants. We began with the question of the relationship of democracy to detention. Political and social theorists have long posited the importance of how a state punishes to how it governs. A good deal of variation exists across contemporary democracies in terms of the rates and the

forms that incarceration takes. Thus, we discussed whether it is possible to posit preconditions for a more tolerant criminal justice system and the effects of detention practices on the legitimacy of a state's governance, on who participates in government and how.

We then turned to consider the global expansion of two forms of detention that are often overlooked: the confinement of noncitizens at the border and of criminal defendants awaiting trial. Another session focused on the role played by rights—national and transnational—in affecting prisoners' experiences and custodial obligations. We closed by discussing paths to reform, how to reduce state reliance on imprisonment as its major mode of punishment, and how to move beyond punishment as a central facet of state governance.





James J. Silk, Clinical Professor of Law, Allard K. Lowenstein International Human Rights Clinic and Director, Orville H. Schell, Jr. Center for International Human Rights, and Judith Resnik, Arthur Liman Professor of Law, welcome participants to the joint convening.



The opening panel of the colloquium

Democracy and Detention

Democracy is central to the identity of modern political orders, including those where detention rates have soared. Hence the first panel explored the relationship of democratic commitments of equality, liberty, and dignity to the expansion of state surveillance and control.



Left to right: James Q. Whitman, Ford Foundation Professor of Comparative and Foreign Law, Yale Law School; Nicola Lacey, School Professor of Law, Gender and Social Policy, London School of Economics; Lukas Muntingh, Co-Founder, Civil Society Prison Reform Initiative, Community Law Centre at the University of the Western Cape; Vesla Weaver, Assistant Professor, Political Science and African American Studies, Yale University; and Judith Resnik, Arthur Liman Professor of Law, Yale Law School



Lukas Muntingh

Co-Founder, Civil Society Prison Reform Initiative
Community Law Centre at the University of the Western Cape
Excerpted with permission from Lukas Mutingh, *Prisons in South Africa's Constitutional Democracy* (Centre for the Study of Violence and Reconciliation, October 2007)

Prisons and prisoners are at the margins of society and even democracies tend to be parsimonious in giving real expression to prisoners' rights. Popular notions of how prisoners should be treated gravitate towards

increased suffering, but these are generally knee-jerk reactions fuelled by frustrations about the lack of public safety and the high rate of violent crime. It is often said, citing both Churchill and Dostoevsky, that the state of a democracy is measured by the way it treats its prisoners. But the relationship is indeed more interactive. What happens inside prisons does not stay there; it goes home with released prisoners and the staff who work there: "When people live and work in facilities that are unsafe, unhealthy, unproductive, or inhumane, they carry the effects home with them." Ultimately it affects the overall state of democracy: rights violations, corruption, impunity and a host of ills associated with prisons spill over into the domain

of free citizens on an ideological level. The way prisoners are treated, and their experience of their rights, shape and reflect on constructs of offenders, punishment, use of force, dignity and the duty of the state to provide care. These constructs are not static; they are continuously moulded and reshaped by the current discourse. This fluidity cannot be left unchecked in a constitutional democracy — the Constitution is indeed there to provide anchorage.

What should prisons in a constitutional democracy look like, then? Prisons serve a set of complex, mutually conflicting and hard-to-achieve goals. Prisons must house people in a humane manner but simultaneously appeal to the punitive nature of prisons — order and security must be maintained while providing an effective deterrent, and appease political opinion. It is in this "inherent policy vagueness" that stakeholders (for example, politicians, bureaucrats and civil society) must find a compromise. Can a constitutional democracy, such as South Africa, find an acceptable compromise, and what would "acceptable" mean under the rules of a constitutional democracy?

At the outset it must be accepted that prisons are in themselves not democratic institutions; they are institutions of coercion reflecting the state's legitimate ability to deprive people of their liberty. Given this acceptance, the benchmark is, however, that prisons should at least not offend the values of a constitutional democracy. The question being posed here about prisons in a constitutional democracy is a normative one, rooted in the belief that prisons will be better off if the values underpinning democracy find clear and tangible expression in the prison system: the rights of prisoners will be better protected, prisons will achieve better results, adherence to the rule of law will be maintained, and ultimately society will benefit through increased safety....



Nicola Lacey School Professor of Law, Gender and Social Policy **London School of Economics**

Excerpted with permission from Nicola Lacey, The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies 109–112 (Cambridge University Press 2008)

... I have suggested that there are, or at least have until recently been, key differences in the dynamics of criminal justice—indeed in the very problem posed by 'law and order'—in political economies organised

along systematically varying lines. Co-ordinated systems which favour long-term relationships—through investment in education and training, generous welfare benefits, longterm employment relationships—have been able to resist the powerfully excluding and stigmatising aspects of punishment. By contrast, liberal market systems oriented to flexibility and mobility have turned inexorably to punishment as a means of managing a population consistently excluded from the post-Fordist economy. As John Sutton put it in his telling analysis of fifteen affluent democracies, 'incarceration rates are higher in countries where capacities for regulating the macroeconomy and containing inequality are weak.' Sadly, the converse is true of systems with low regulatory capacity. And this has been true, unfortunately, even in the case of left-of-centre, welfareoriented administrations like the Blair government in Britain....

The 'culture of control', in other words, is a product of the dynamics of liberal market economies. These dynamics have reached their most extreme expression in the neo-liberal postwar order of the USA, but they are also present, in an attenuated form, in Britain, in Australia, in New Zealand. In particular, the electoral arrangements and other features of political organisation in these countries have set up a genuine 'prisoners' dilemma', in which the strategic capacity for co-ordination necessary to resolve the collective action problem posed by the politicisation of criminal justice is lacking. But the story of the Scandinavian countries, of Japan, and even of many of the corporatist countries of north-western Europe, is a different one. Even in the light of recent increases in punishment in some of these countries, differences between the two main families of systems remain striking.

But does this mean that the world is destined to remain one of persistent 'contrasts in tolerance', with path-dependence and comparative advantage aligning countries on either side of the liberal/co-ordinated market economy distinction for the foreseeable future? Or might external conditions or policy initiatives change the prevailing pattern? . . . In a world of globalisation and migration, will the co-ordinated market economies be able to draw upon their long-standing institutional capacities to resist the temptation of 'governing through crime'?



Tashiana Hudson, YLS 2017





Professor Howard V. Zonana, M.D., Professor of Psychiatry, Yale School of Medicine, and Clinical Professor Adjunct of Law, Yale Law School. Dr. Zonana is a regular contributor to and participant in the Liman Workshop.

Detaining Outsiders: Migrants, Borders, and Security

Detention is an increasingly common fixture of national strategies to manage borders. The second panel considered the proliferation of immigration detention, explored the justifications offered for detaining people who lack legal authorization to be present in a nation-state's borders, and discussed how migration policies could be changed.



Left to right: Mary Bosworth, Professor of Criminology and Fellow of St Cross College, University of Oxford, and Professor of Criminology, Monash University, Australia; and Allegra McLeod, Associate Professor of Law, Georgetown University Law Center. Also joining the panel and pictured later are: Michael Flynn, Zonke Majodina, and Darryl Li.



Michael FlynnDirector, Global Detention Project
Geneva, Switzerland

Before the end of the Cold War, immigration-related detention—or the deprivation

of liberty of non-citizens for reasons related to their immigration status—was largely an ad hoc tool that wealthy countries employed in exigent circumstances. Today, it has become an entrenched policy apparatus in nearly all migrant-receiving countries that counts on spiraling budgets, mature bureaucracies, and burgeoning networks of detention facilities. In addition, recent years have seen immigration detention regimes emerge in numerous countries where there is little or no evidence of efforts to detain migrants as recently as ten to fifteen years ago.

What explains this growth and evolution of the immigration detention phenomenon? Research undertaken by the Global Detention Project indicates that an often overlooked variable shaping detention policies and practices is the response by states to pressure stemming from key international norms relevant to the rights of non-citizens, including the right to liberty and security of the person.

On the one hand, efforts to promote norms regarding the proper treatment of detainees (those related to security of person) appear to have been instrumental in spurring many destination countries to create specialized institutions, which has paralleled increases in the numbers of people being detained.

The apparent impact of the Council of Europe's Committee for the Prevention of Torture (CPT) on national policies is a case in point. Since the early 1990s, the CPT has sharply criticized member states for placing immigration detainees in prisons used by criminal justice systems. However, instead of questioning the need to detain migrants and asylum seekers, the CPT has emphasized the proper treatment of these people once they are in custody. As part of its recommendations, the committee has systematically urged governments to build dedicated detention facilities and create a cadre of specially trained personnel to operate them. A review of communications between the CPT and governments reveals that in nearly all cases, national authorities eventually heeded the CPT's advice and established specialized regimes. During this same 25-year period, the number of people detained in Council of Europe countries has increased in some cases many times over.

At the same time that detention regimes have been maturing and expanding in major receiving countries, these same states have sought to externalize immigration control efforts, largely in order to circumvent pressure stemming from norms that call into question the state's right to detain and deport, such

as the right to liberty and prohibition of *refoulement*. It is well documented how receiving countries across the globe have employed a host of tools to cajole, encourage, and at times coerce neighboring countries to serve as gatekeepers to prevent asylum seekers and other forced migrants from arriving at their intended destinations.

As a result of this diffusion of detention pressures and practices, an archipelago of new detention regimes has

emerged, from Asia to the Middle East and from North Africa to the Caribbean. If current trends continue, transit countries will in 10–20 years be among the most important migrant detaining states in the world, having in place detention estates that rival those of main destination countries. To some extent, this is already the case, as the large detention infrastructures of countries like Turkey, Mexico, and Indonesia demonstrate.



Zonke Majodina

Former Member, UN Human Rights Committee; Former Deputy Chairperson, South African Human Rights Commission

Security and control have become dominant themes influencing immigration policies in many parts of the world today. Global trends show that immigration detention has become an integral part of restrictive, control-oriented immigration policies that

seek to curb or even stop immigration flows. There are a number of arguments put forward by governments to justify such policies. First, increased migration flows, heightened security concerns and globalization are seen as creating a context in which border control and territorial integrity continue to be a central concern. The formal purpose of immigration detention is therefore to achieve the practical outcome of facilitating the forced departure of those who have gained illegal entry to destination countries. Secondly, governments justify the increased use of immigration detention as a response to political pressure from nationalistic parties that press for heightened border controls and reduced immigration flows. Thirdly, immigration detention is projected as having the important symbolic function of demonstrating that governments are in control of their territories and borders, thus allaying social anxiety and restoring citizens' sense of public order.

In contrast, a human rights approach to immigration detention starts from the premise that countries that have signed and ratified international human rights treaties have an obligation to extend human rights protection to anyone within their jurisdiction or effective control. There are several internationally recognized human rights norms that guarantee the right to liberty and security of the person, and, in particular, the right to test the legality of one's detention before a competent and impartial tribunal. Among these, reference must first be made to Universal Declaration on Human Rights, Article 9, which stipulates that "No one shall be subjected to arbitrary arrest, detention or exile." The International Covenant on Civil and Political Rights further elaborates on this principle in Art 9(1),

by stating that "Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with procedures as are established by law."

International human rights standards further establish that detention, as part of immigration policy, should be the exception rather than the rule and should be a measure of last resort, to be imposed only where less restrictive alternatives are not feasible in each individual case. Furthermore, the right to liberty and security of person requires that deprivation of this right should not only be lawful but also reasonable and necessary in all circumstances. These human rights standards also relate to procedural guarantees that apply whenever a person is detained, for example:

- a. informing a detainee of the grounds for arrest and detention,
 of his/her rights and how to access these rights;
- informing a relative of the detainee of the arrest and place of detention; registries of both detainees and responsible officials are to be made accessible, for example, to doctors, lawyers, relatives and friends;
- c. providing prompt access to lawyers, usually within 24 hours;
- d. ensuring judicial control; a detainee has to be brought promptly before a judge or other competent authority and has a right to have a court determine the lawfulness of the detention:
- the mandatory treatment of persons deprived of their liberty with humanity and respect for the inherent dignity of the human being and to access to medical care.

Even when it is initially lawful, deprivation of liberty becomes arbitrary and contrary to the law if it does not meet the conditions set out above. For example, people deprived of liberty are entitled to a prompt trial, release or compensation if the detention is arbitrary. What all this means is that undocumented migrants deprived of their liberty are entitled to legal protection under both domestic law as well as international human rights law. They are never 'de jure' in a 'legal black hole.'

It is a well-established fact that the detention of asylum seekers and undocumented migrants most often ends up being indefinite detention. However, it is not only the sheer length of time that affects this group but other elements such as uncertainty about the actual terms of detention, illegality in the manner of arrest such as when there is no judicial warrant for the arrest, and little or no possibility of testing the legality of the detention before a competent tribunal. Undocumented migrants and asylum seekers are usually held without regard

to the fact that they have not been convicted of any crime requiring detention and administrative procedures akin to the treatment of criminal suspects.

The state of being in limbo and uncertainty about the future has been described by some as mental torture. Nonetheless, such de facto preventive detention without any realistic hope of release is the fate of hundreds of thousands of migrants in a number of democracies around the world, including the U.S., Australia, Canada, Western Europe. A further concern is the criminalization of immigration detention. Referring to detention measures under European Law, one legal scholar observes that "Immigration law has been absorbing theories, methods, perceptions and

Undocumented migrants and asylum seekers are usually held without regard to the fact that they have not been convicted of any crime requiring detention and administrative procedures akin to the treatment of criminal suspects.

priorities associated with criminal enforcement while explicitly rejecting the procedural ingredients of criminal adjudication." The use of administrative procedures for confining migrants is justified on the assumption that immigration detention is non-punitive and is merely a bureaucratic measure to enforce immigration policy.

One important, albeit unintended consequence that immigration detention has provoked is the increasing use of national and international litigation challenging such detention and removal of undocumented migrants. In the U.S., the Supreme Court recognised the "serious constitutional threat" posed by potentially indefinite detention, and limited the duration of immigration detention for removable and inadmissible aliens only for as long as reasonably necessary to carry out the alien's removal. The court determined that six months was a presumptively reasonable period.

Over and above national litigation, UN human rights bodies have established important international jurisprudence against

detention of migrants/asylum seekers. This jurisprudence clarifies the essential elements of immigration detention and the fact that it is incompatible with international law and standards. In this regard, it is also worth pointing out that the international community is now playing a big role in bringing about awareness of the fact that immigration detention is a violation of human rights. For example, in its Resolution 63/184, the UN General Assembly called on states to "respect the human rights and inherent dignity of migrants and to put an end to arbitrary detention." On its part, the UN Human Rights Council held a panel discussion on the human rights of migrants in detention centres following a recommendation for urgent deliberation to seek effective alternatives to prevent violations affecting asylum seekers and migrants in detention around the world. In its Annual report of February 2009, the UN Working Group on Arbitrary Detention

noted its concern at the tightening of restrictions against undocumented migrants by governments, to the extent of making irregular entry a criminal offence. The report stated that migrants/asylum seekers should not be penalized or treated as criminals, and viewed only from the perspective of national security. In a further report in 2010, the Working Group determined that while fully aware of the sovereign right of States to regulate migration, immigration detention should be gradually abolished.



Professor Feisal G. Mohamed, The Graduate Center, City University of New York



Sharanya Kanikkannan, Bernstein Fellow 2015–2016



Reva Siegel, Nicholas deB. Katzenbach Professor of Law, Yale Law School

Punishment before Trial

More than 3.3 million people worldwide are held in pretrial detention, sometimes for longer than the maximum sentences they would have received if convicted. Panelists considered the factors driving the increased reliance on pre-trial detention and explored paths towards its reduction.



Caption: Left to Right: Fiona Doherty, Associate Clinical Professor of Law, Yale Law School; Maja Daruwala, Executive Director, Commonwealth Human Rights Initiative, India; Uju Agomoh, Director, Prison Rehabilitation and Welfare Action, Nigeria; Martin Schönteich, Senior Legal Officer, Open Society Justice Initiative; and Melanie Vélez, Litigation Director, Southern Center for Human Rights, USA



Martin Schönteich

Senior Legal Officer, Open Society Justice Initiative

Around the world, millions of people are effectively punished before they are tried. Legally entitled to be considered innocent and released pending trial, they are consigned pretrial detention, where they are subjected to torture, exposed to life-threatening

disease, victimized by violence, and pressured to pay bribes.

The right to be presumed innocent until proven guilty is universal, but almost a third of the world's prisoners, some three million people, are behind bars, awaiting trial or the finalization of their trials. Few rights are so broadly accepted in theory, but so commonly violated in practice.

In some countries, pretrial detention periods of months and even years are not unusual. Among Council of Europe countries, the average period of pretrial detention is about half a year. In Nigeria, it is in excess of three years, according to official government data. The present global cohort of detainees will collectively spend an estimated 640 million days in pretrial detention—a terrible waste of human potential and at considerable cost to states, taxpayers, families and communities.

Not all pretrial detention is irrational or unlawful. Persons who present a genuine risk of flight or of endangering witnesses or the community should be detained before trial, in the absence of reasonable alternatives. Applied properly and sparingly, pretrial detention plays an important role in a balanced criminal justice system.

However, the vast majority of pretrial detainees pose no threat to society and can be safely released pending trial. In fact, worldwide, many pretrial detainees are eventually released without trial, or tried and acquitted. Many others are found guilty but receive a non-custodial sentence for a minor offense. In England and Wales—a jurisdiction that uses pretrial detention relatively sparingly—over half of all pretrial detainees ultimately are acquitted or receive a non-custodial sentence.

Too often individuals end up in pretrial detention because they are poor. The indigent are more likely to come into conflict with the law, more likely to be detained pending trial and less able to afford the three B's crucial for pretrial release: bail, barrister, or bribe.

Numerous pretrial detainees are convicted of the charges against them not because they are guilty, but because of the abuse and abusive conditions they experience. Violence, torture and related physical and psychological abuses of prisoners are particularly concentrated during the pretrial stage of the

criminal justice process—especially during the first few days of detention to extract confessions from defendants.

Pretrial detainees are generally confined in worse conditions than convicted prisoners. Pretrial detention centers tend to be especially overcrowded, and pretrial detainees typically have little or no access to educational, vocational and related work opportunities. Unsurprisingly, compared to sentenced prisoners, levels of suicide and self-harm are significantly higher among pretrial detainees.

The excessive use of pretrial detention undermines public security by substantially contributing to prison overcrowding. Globally there are some 3 million pretrial detainees while prisons are overcrowded by 1.5 million prisoners. Reducing the number of pretrial detainees by half would, in principle, solve the world's prison crowding problem. Prison crowding complicates efforts to rehabilitate incarcerated offenders, resulting in higher recidivism rates.

In many jurisdictions pretrial detainees are not confined separately from sentenced convicts. Consequently, defendants—typically young men charged with relatively minor offenses—live together with serious and hardened convicted criminals. Such mixing heightens the risk of abuse and has a criminogenic effect. Longer periods of pretrial detention lead to lost earnings, broken homes and damaged communities, aggravating some of the underlying causes of crime in fragile communities.

Prisons serve as vectors in the spread of communicable diseases and aggravate existing health problems, producing broader public health consequences as released prisoners spread disease to the general population. As inadequate as health services may be for convicted prisoners, health services are frequently even more lacking in remand facilities. There is often a reluctance to start treatment for infectious diseases that requires a sustained period of therapy. Officials are often less concerned about ensuring continuity of care and support for people in pretrial detention, whose custody is seen as temporary, even if "temporary" turns out to be of long duration.

Corruption flourishes in the pretrial phase because it receives less scrutiny and is subject to more discretion than subsequent stages of the justice process, and often involves the lower paid and most junior actors in the system. Unhindered by scrutiny or accountability, police, prosecutors, and judges are able to arrest, detain, and release individuals based on their ability to pay bribes. The justice system's credibility suffers when the innocent are arrested and detained because they cannot pay a bribe, and the guilty go free because they can. Moreover, by corrupting the administration of justice and undermining the rule of law, the irrational and excessive use of pretrial detention weakens governance overall.

Pretrial detention also critically undermines socioeconomic development and is especially harmful to the poor. For individuals, the excessive use of pretrial detention means lost income and reduced employment opportunities; for their families, it means economic hardship and reduced educational outcomes; and for the state, it means increased costs, reduced revenue, and fewer resources for social service programs.

In addition to lost income, detainees' families must wrestle with legal fees and other expenses. When an income-earner is detained, family members must adjust not only to the loss of that income but also to the costs of supporting that family member in detention, including travel to visit the detainee, food and personal items for the detainee, and, often, low-level bribes to guards.

The global overuse of pretrial detention is a massive, if largely unnoticed, form of human rights abuse. It directly affects millions of people each year. Many more people are indirectly affected: they suffer from a spouse's lost income or a parent's absence. Broader society is also affected in the form of wasted human potential, lost productivity, and the misuse of state resources.

Excessive and arbitrary pretrial detention is not just a human rights violation, but also the nexus of other abuses and ill effects. The overuse of pretrial detention is linked to torture, corruption, and the spread of disease; it stunts economic development and undermines the rule of law.



Paul Lee, Yale College '18



Professor Linda R. Meyer, Quinnipiac University School of Law



Dante O'Connell, Brown Liman Summer Fellow 2015

The Language of Punishment



Robert A. Ferguson George Edward Woodberry Professor of Law, Literature, and Criticism Columbia Law School

...Part of my current work on punishment has been inspired by letters written to me by people in prison who have some knowledge of my most recent book, *Inferno:* An Anatomy of American Punishment, published in 2014. I now have a file

drawer full of such letters and have spent a lot of time reading them and responding to them. Listening to the language of the punished has forced me to ground my thought in very basic levels.

Prison letters have taught me or confirmed six things I already knew from prison narratives in print. But I now know these things in a far more visceral way. Incidentally, these letters are invariably very long. They reminded me of one of the often overlooked passages in Martin Luther King, Jr.'s justly famous Letter from Birmingham Jail in April 16, 1963. "Never before have I written so long a letter," wrote King from jail. "I'm afraid it is much too long to take your precious time. I can assure you that it would have been much shorter if I had been writing from a comfortable desk, but what else can one do when he is alone in a narrow jail cell, other than write long letters, think long thoughts and pray long prayers?"

What else indeed. Here are the six things I learned from prison letters beyond their length. First, people in prison have their own language distinct from that used against them, and that language is subtle even when basic. It ranges across irony, in-grown comedy, veiled allusion, and despair in covert reduction of the authority exercised over them. Second, long-termers in prison are an unused resource that could improve prison life if given the chance. Third, education helps the incarcerated dramatically, but it is a poorly used resource in correctional facilities.

....Fourth, the real growth of a person in prison is inward. The movement in recognition goes from victimization to realization of the role a person played in being there. "It was my fault, and I have to do something about that." This is a lonely and painful but necessary process rarely helped by prison authority. Fifth, writing out one's thoughts to another about the stages of one's understanding is an enormous benefit to the development of anyone in prison. It is about being heard. Sixth, and finally, contact with the outside world through written communication is a crucial ingredient of mental health. Sadly, the main source of formal letters in the electronic age of the 21st century may end

up being prison letters, full of yearning, in search of someone who might care.

To these six points but from the same source, I bring a theory or concern about human nature itself. What does it actually means to be human? This is a big topic in theories of punishment with much philosophical debate devoted to the subject: such terms as "the value of individual soul," "personal dignity," "evolving decency," "privacy," "individual integrity," "human rights," and "conscious awareness of self and identity," all form a tangle of concerns. Even so, these concepts have done little to reduce severity of punishment in American prisons.

The graphic nature of the letters I receive have led me to think in a more elemental way about human nature. My own much simpler approach turns on the fact that human beings are defined by their ability and need to develop in some way. Most animals fulfill their nature. Human beings define their nature through development beyond themselves, and if they are not allowed to develop positively they will develop negatively—this is the problem in every prison in the country. No one is allowed to develop in anything like personally meaningful terms.

This irrepressible need for development also exposes the shopworn nature of the terminology of punishment now in use, terminology that has not really changed since the Enlightenment developed such concepts as "proportionality," "utility" "social welfare," "communal security," "rehabilitation," "correction," "discipline," and "retribution" as the balancing act in carceral punishment. To this day, philosophical debates over this balancing act turn on the eighteenth-century words of Immanuel Kant and Jeremy Bentham.

Our language of punishment is really that old. Perhaps it is no wonder it has become so threadbare. We need a new vocabulary governing new ways of thought if we want to answer the punitive impulse that currently controls penology in this country. Think about some of our current terms. "Retribution" stems from "tribute," what the weak must continue to pay the strong forever. "Rehabilitation" implies a return to a positive communal state, not the case with many we incarcerate and currently release into broken neighborhoods. We may have departments of corrections, but we manifestly have no "houses of correction."....

Of course, it is easy to criticize what we are doing wrong, much harder to come up with terminology and thought about how to do it right. Most of what I am reaching for, to use a term from Kenneth Burke, is "a language without clenched fists." A language that can begin to turn what is now a vicious "interior culture" in prison into more of a community....

Rights, Oversight, and Change

This panel explored the promise and the limits of courts in protecting the rights of prisoners. Questions included whether an insistence on rights produces systemic change, given limited resources, and whether lawsuits can help bring new resources to prison systems. In short, the issues were how rights, both national and international, are and can be used in practice by prisoners, lawyers, courts, and correctional institutions.



Left to right: Rick Raemisch, Executive Director, Colorado Department of Corrections, USA; Miguel Sarre, Professor of Law, Instituto Tecnólogico Autónomo de México; David Fathi, Director, ACLU National Prison Project, USA; Dirk Van Zyl Smit, Professor of Comparative and International Penal Law, Faculty of Social Sciences, University of Nottingham School of Law, United Kingdom; Başak Çalı, Director, Center for Global Public Law, Koç University, Istanbul; and Johanna Kalb, Visiting Associate Professor of Law, Director, Liman Public Interest Program, Yale Law School



David C. FathiDirector, National Prison Project
American Civil Liberties Union

In no country has the influence of penal populism been as deep and lasting as in the United States. Several atypical features of the American political system—including election of judges and prosecutors and, in many states, the ability of citizens to bypass

the legislature entirely, enacting criminal law by referendum—all but guarantee that punitive public attitudes will quickly and efficiently be translated into government policy. The last few decades have been characterized by criminal justice policy as a one-way ratchet, with every high-profile crime reliably followed by ever more draconian laws and policies.

Rights discourse—and litigation to enforce those rights—can be effective at curbing discrete and particularly egregious practices that, while they may enjoy popular support, are seen by elites as simply going too far. By contrast, they are less effective at challenging more mainstream policies, particularly in cases in which the rights in question are difficult to articulate or, as a matter of domestic legal doctrine, difficult to enforce. It is striking, for example, that rights discourse plays very little

role in the current American debate over mass incarceration. Many critics denounce the policies that have given the United States the world's highest incarceration rate not as a violation of anyone's rights, but rather as costly and inefficient—in short, a poor investment of taxpayer dollars, as if the imprisonment of 2.3 million people were just another unwise fiscal choice. This reticence may be related to the U.S. Supreme Court's repeated pronouncements that, with few exceptions, noncapital sentencing schemes simply do not implicate individual rights, although it seems likely that it also reflects a popular understanding of what rights do and do not exist in this context.

The United States is also an outlier in its relative indifference (and sometimes frank hostility) to international law. Its treaty ratifications are larded with reservations, understandings, and declarations that significantly undercut the treaties' protections, and it famously withdrew from the compulsory jurisdiction of the International Court of Justice when a case did not go its way. At the same time, recent years have seen a number of cases in which the U.S. Supreme Court has cited international law in invalidating criminal punishments. And the United States has increasingly taken seriously its periodic reviews by United Nations treaty bodies such as the Human Rights Committee and the Committee against Torture.

Of course much international human rights law consists of nonbinding "soft law," such as the Standard Minimum Rules for the Treatment of Prisoners. And even binding treaties are, as a matter of U.S. law, non-self-executing, meaning that they do not confer domestically enforceable rights absent congressional legislation. For these reasons, international human rights law and mechanisms are, in the U.S. context, most effective as a means of "naming and shaming" rather than as a source of rights that the government is legally bound to respect.



Rick Raemisch Executive Director Colorado Department of Corrections

Last fall at the invitation of Swedish Corrections Director Nils Öberg, I and others visited the Swedish prison system after Director Öberg and his team visited U.S. systems, including Colorado. Sweden has a population of about 10.2 million, and Director

Öberg oversees the complete prison system which consists of what we would call the county jails, and state and federal prisons. In the whole Swedish system slightly fewer than 5,000 inmates are incarcerated.

On the other hand, Colorado has a population of approximately 5.2 million, and in the state prison system alone we incarcerate more than 20,000 inmates. When I speak about this publicly I tell people I met a lot of Swedish people in Sweden, and although nice, they did not seem to be a lot nicer than Coloradoans. The point is, as we all know, in America we over-incarcerate. This year's theme of "Detention on a Global Scale" was not only an opportunity to broaden the participants' knowledge of international detention, but also an opportunity to see what may be the future of correctional partnerships.

In the United States, most if not all in corrections currently believe in using best practices and using what works. More of us are examining other nations' models to determine if some of their practices can be incorporated into ours. The panel I participated in was entitled "Rights, Oversight, and Change," and one of the topics discussed was whether advocates should push not only on a state/national front, but internationally as well. Prior to the Colloquium I would have argued no, because I felt the task was too daunting. After listening to the various speakers from a number of different countries, I realized that international boundaries on the corrections conversation are coming down. This will not only benefit corrections experts, but I believe advocacy groups as well. One only has to watch the developing international effort to end the death penalty and to curtail the over-use of solitary confinement to see that there is a place for international advocacy.

I would also like to point out the remarkable direction I have seen corrections taking after now participating in two Liman Colloquiums. Positive partnerships have been formed that have not been seen in the past. Yale Law School, under the guidance of Judith Resnik, Hope Metcalf, Johanna Kalb, and others, has been working as a partner with the Association of State Correctional Administrators to assist in guiding prison reforms. In the past, these conversations would have taken place in the context of a lawsuit. Partnerships with the ACLU have also been formed to reduce previous barriers and move corrections forward. I don't think many truly realize how amazing this progress is. It is forums such as the Liman Colloquium that have nurtured these partnerships.



Darryl Li, Visiting Robina Human Rights Fellow, moderated the panel, Detaining Outsiders: Migrants, Borders, and Security. Beginning in the fall of 2016, he will join the faculty of the University of Chicago as an assistant professor of Anthropology.



Molly Land, Professor of Law at the University of Connecticut Law School, also served as a Robert L. Bernstein Fellow in 2002–2003 and as the Robert Cover-Allard Lowenstein Fellow in International Human Rights Law from 2005–2007.



Among attendees were members of The Phoenix Association, a Connecticut-based group that facilitates workshops between formerly incarcerated people and corrections officials. Left to right: Kumar Viswanathan, Michael Constantopoulos, and Michael Judd.

As Director Raemisch noted, interactions across borders can provide opportunities for reflection and impetus for change. In the spring of 2015, David Fathi, Rick Raemisch, and Bernie Warner, Secretary of the Washington Department of Corrections, traveled to Vienna to participate in revising the United Nations Standard Minimum Rules for the Treatment of Prisoners. Below, David Fathi reports on the results of this collaboration. The May, 2015 Rules can be found at https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ Sessions/CCPCJ 24/resolutions/L6 Rev1/ECN152015 L6Rev1 e V1503585.pdf

David Fathi, Victory! UN Crime Commission Approves Mandela Rules on Treatment of Prisoners

Excerpted with permission from David Fathi, available at https://www.aclu.org/blog/speak-freely/victory-un-crime-commission-approves-mandela-rules-treatment-prisoners

... The Mandela Rules—named in honor of the late South African President Nelson Mandela, who was imprisoned for 27 years by the country's apartheid regime—are the revised United Nations Standard Minimum Rules for the Treatment of Prisoners, or SMRs. The SMRs are the leading international body of principles on the treatment of prisoners, but they were drafted in 1955 and were badly in need of updating.

The revisions provide that solitary confinement "shall be used only in exceptional cases as a last resort for as short a time as possible and subject to independent review." Indefinite solitary confinement and prolonged solitary confinement—defined as more than 15 consecutive days—are now prohibited. Solitary confinement will also be prohibited in the case of persons with mental or physical disabilities when their condition would be exacerbated.

The Mandela Rules include other important revisions addressing the treatment of women and persons with disabilities. The provisions regarding health care are strengthened, and significant safeguards on the use of restraints have been added....

One notable feature of this year's Crime Commission was the positive role played by the United States. The U.S. delegation strongly supported adopting the rules and naming them in honor of Nelson Mandela, whom it called "one of the greatest defenders of human rights and dignity in recent history." It resisted attempts to reopen the text of the Mandela Rules that had been agreed to in Cape Town earlier this year, and it fought back against efforts to insert language that would allow countries to disregard certain rules for cultural and religious reasons.

Perhaps most important, the U.S. delegation included the corrections directors from Washington [Bernie Warner] and Colorado [Rick Raemisch], two states that have significantly reduced solitary confinement and pioneered other progressive reforms. The two directors described their work at a panel discussion sponsored by the United States, and the duo played a key role in negotiations leading to adoption of the Mandela Rules.



The End(s) of Detention

The Colloquium's closing panel was focused on possible sources of change in incarceration itself. Questions included whether reform efforts should be directed toward improving the experiences of prisoners, or whether to abandon the idea of prisons as a productive site of transformation and instead explore alternatives to incarceration.



Glenn E. Martin, Founder and President, Just Leadership USA; Bernie Warner, Secretary, Washington Department of Corrections, USA; Hope Metcalf, Executive Director, Orville H. Schell Jr. Center for International Human Rights and Clinical Lecturer in Law, Yale Law School; Nils Öberg, Director-General, Swedish Prison and Probation Service; Marie Gottschalk, Professor of Political Science, University of Pennsylvania, USA



Marie Gottschalk
Professor of Political Science
University of Pennsylvania
Excerpted with permission from Marie Gottschalk,
Caught: The Prison State and the Lockdown of American Politics, 19, 22 (Princeton University Press 2014)

.... Framing the problem of mass imprisonment as largely a fiscal problem (i.e., we just cannot afford it anymore) will not sustain the political momentum needed over the long haul to slash the prison population

and dismantle the carceral state. But the problems with the single-minded focus on the fiscal burden of mass imprisonment run deeper than that. The fiscal imperative argument is providing a huge political opening for the expansion of the private prison industry and for a possible return to one of the most ignominious chapters in U.S. penal history—the unbridled exploitation of penal labor for profit It has helped to bolster the conservative, neoliberal, austerity-first view of what is possible in American politics today. Furthermore, the fiscal approach to penal reform is wholly inadequate to tackle the wide range of problems associated with the emergence of a tenacious carceral state that is altering how key social and political institutions operate and perverting what it means to be a citizen in the United States It slights the compelling civil and human rights concerns that the carceral state raises as it removes wide swaths of historically disadvantaged groups from their neighborhoods, leaving behind devastated families and communities and troubling questions about the fairness and legitimacy of U.S. political institutions and the broader social order....

Today the pillars of the U.S. social welfare state, including Medicare, Medicaid, Social Security, a vibrant labor movement, and adequately funded public schools, are vulnerable to direct assaults from the right and to kinder, gentler jabs from President Obama and some other leading Democrats. In such a political environment, it is hard to imagine that calls for justice reinvestment couched in economistic and ostensibly nonpartisan language will actually result in reallocating the tens of billions spent annually on corrections to social and economic programs that reduce crime and improve the lives of people residing in high-crime communities.

Framing the carceral state primarily as an economic issue may yield some short-term benefits. But in the absence of more compelling arguments against the prison buildup, it becomes that much easier to revert to funding a vast carceral state, no questions asked, once the economy picks up.

A durable reform movement to weather the backlash that efforts to substantially reduce the incarceration rate will inevitably spark has yet to coalesce. The budgetary and other economic problems brought on by the financial meltdown and

Great Recession do not spell the beginning of the end of mass incarceration and the carceral state in the United States. To borrow from Winston Churchill, "It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

Criminal justice is fundamentally a political problem, not a crime and punishment or a dollars-and-cents problem. A huge

penal system is well on its way to becoming the new normal and a key governing institution in the United States. Like the vast military-industrial complex that quickly insinuated itself into the political and economic fabric in the postwar decades, the carceral state has become integral to the U.S. polity, economy, and society in ways that we have yet to fully acknowledge....



Nils Öberg
Director General
Swedish Prison and Probation Service

In Sweden, the system for criminal sanctions has a clear emphasis on reintegration. We are of course, like everywhere else in the world, primarily tasked with carrying out court decisions. But as a public service, we are also asked to make a significant

contribution to the long-term safety and security of our society.

The first decision when it comes to corrections is whether to give priority to custodial or non-custodial penalties. In Sweden, we made that choice a long time ago. We have for a long time developed and given priority to probation and alternative penal sanctions. Our conviction is that the use of imprisonment must be the very last resort, not a first preferred option. As professionals, we know better than most others what the human cost of incarceration is. We see it first hand, every day. And we know that if there is a possibility of offering non-custodial penal sanctions, the likelihood of succeeding in our rehabilitation efforts increases significantly.

The discussion of criminal policies is loaded with emotions, mostly anger and fear. The criminal justice sector is one of the few policy areas where beliefs and deep personal feelings are constantly allowed to overrule professional experience, evidence-based practice, and hard facts in ways that would not be acceptable in any other area of public administration. The good news is that it is an area where there nowadays is a great deal of evidence-based research and knowledge available to those who wish to make use of it.

Our role in Prison and Probation is not to further explore the specific criminal act that has been committed. That is the one static factor in a convicted person's life that we cannot do anything about. Instead we try to focus on all the dynamic factors in an individual's life that we know determine whether that person is likely to commit another criminal offence or not. In other words, we try not to dwell on the failures of the past, but look at the possibilities ahead.

We know through our extensive surveys that our inmates and clients have problems in many different areas. And they have had them for a very long time. We also know that the specific reason behind their arrest is very often irrelevant or at least seldom the primary factor behind their criminal behaviour.

The shift towards rehabilitation has in many ways affected the way we operate. If we really want to make a long-term contribution to safety and security of our society at large, then we need to do a couple of things well.

The first is to make sure that we have the right people in the right place at the right time. Diversification is important, as well as understanding that the prison and probation effort is dynamic, not static. We must progressively, and from a very early point in time, prepare every convicted person for release. And in that effort, every day counts.

Second, what we have found very effective is combining very high standards for dynamic security with a solid set of humanitarian values and practices. Prisoner-staff relations remain the single most important factor in this regard. Our staff is charged both with the classic role of providing supervision, as well as with creating a supportive environment for our inmates.

We have a staff ratio in our prisons of almost 1-1 which is indeed very high by international standards. It makes the Prison and Probation service the fourth largest state-run organisation in Sweden with all that this entails in terms of costs. But we believe that the alternative would most certainly cost our society even more.

The last point has to do with consistency and mandate. In my experience, any reform in the criminal policy area needs to decide on the mandate given to the profession. In our jurisdiction we are very fortunate in this regard. How we carry out our daily work is almost entirely our own responsibility. We have a great deal of freedom both in terms of how we organize ourselves and the long-term strategies we develop to reach the goals our politicians define.

In policy areas where public opinion holds strong views, this is tremendously beneficial. It is our way of securing that the rule of law governs over time. But an equally important aspect is that the system secures our ability as a profession to implement the strategies we choose to adopt over time. In other words, we have been given the power to stick to the ideas we believe in.



Glenn MartinFounder and President, Just Leadership USA

Recently, I had the honor of participating in a strategic planning initiative that addressed both the intersection of, and possible remedies to, the issues of gun violence, policing, and mass incarceration in the United States. On Wednesday, June 17, 2015, George Washington University Law School

served as host to a select group of civil rights and religious leaders, scholars, elected officials, law enforcement officials, and foundation officers brought together by The Joint Center for Political and Economic Studies and The Joyce Foundation.

Our day culminated with an invitation to join members of President Obama's domestic policy staff in the Eisenhower Executive Office Building for a discussion about their work on these issues. A day of thoughtful and inspired dialogue, however, quickly turned into one of needless humiliation and stigma for me. As each of my colleagues received green passes granting them immediate access, I received a pink ID bearing the label: "Needs Escort." Its inspiration was quickly and unsurprisingly confirmed: anyone with a criminal conviction requires an escort at all times on the White House grounds.

The staggering symbolism of the ordeal was not lost on me. In a country where 65 million people have a criminal record on file, being selectively barred from entering the White House for a discussion about those very same people was as insulting as it was indicative of the broader problem.

Along with millions of others, I have watched with tremendous pride and optimism as the Obama administration has stated that our carceral policies are patently counterproductive. Further, those policies disproportionately target communities

of color, running roughshod over our declared principles of justice, fairness, and proportionality in the process. I submit that the treatment I received as an invited White House guest, and by extension all others with prior convictions, further erodes the life of those principles. In his letters of commutation, President Obama has concluded, "Remember that you have the capacity to make good choices. By doing so, you will affect not only your own life, but those close to you. You will also influence, through your example, the possibility that others in your circumstances get their own second chance in the future."

This counsel is as applicable to our nation's corridors of power as it is to our most travailed citizens. The work of the mature democracy is to organize itself in such a way that best enables that process without undue hardship. Along my journey to national advocacy, I've disabused myself of several of our national delusions, the most poignant being the myth of the voiceless masses who require the spokesmanship of a noble and courageous few. I never met any of the alleged voiceless during my incarceration, only the deliberately silenced. In the corridors of our nation's highest office, I found my voice and my person restricted in an agonizingly similar way to that which I encountered in prison. Rather than being debilitated, I walked away further emboldened and hopeful that when guided by a commitment to justice, power might listen.

There is strong evidence to believe that is the case. In a March interview with David Simon, President Obama stated rightfully: "Part of the challenge is going to be making sure, number one that we humanize what so often on the local news is just a bunch of shadowy characters and tell their stories." The bottom line is that there is no one better positioned to tell these stories than the people who lived them. As long as we remain barred from providing leadership toward a solution and from speaking from the truth of our own experience, then it is hard to take seriously any notion of meaningful criminal reform in America.



Hope Metcalf
Executive Director, Orville H. Schell Center for International Human Rights
Yale Law School

There is little question today that that the United States incarcerates too many people and for too long. The evidence—in terms of the millions of people locked away, the missing generations in low-income communities and communities of color, and

the fiscal drain on state budgets—is irrefutable. In an era of extreme partisanship, criminal justice reform has become one of the few areas of consensus.

Most conversations about the current detention crisis focus on the "front" and "back" ends of the system. Many states have reduced sentences, reversed mandatory minimums, created diversionary programs for non-violent offense, and created other means to decrease the numbers of people entering the system. Another large area of change seeks to lower barriers for formerly incarcerated people to claim their full status as

civic, political, and economic participants in society. These are essential tools, particularly the efforts to reduce the flow into prison.

By contrast, the "middle"—i.e., the months or years or decades of incarceration—receives little attention, except for occasional

scandals involving prisoner abuse or violence against staff. Reformers across the political spectrum share an unspoken assumption that our society should expect little, if any, good to come from the prison system. In the 1970s, a new strand of criminologists challenged the tenets of rehabilitation and argued that "nothing works." That legacy persists.

For those on the right, prisons should be harsh because the people sent there should feel shame and experience deprivations of various kinds. The only change needed is to "right size" the current system to subject the most reprehensible people to those conditions. For those on the left, "corrections" is a contradiction in terms because the system is inherently racist, corrupt, and cruel. By that measure, prison reform is a mirage, and abolition is the only moral option. (Of course, a number of administrators and

criminologists have quietly continued the quest to put the vast machinery of the criminal justice system to work to create positive outcomes. But these initiatives are often small in scale and virtually absent from the larger debates.)

At some point, the present high watermark of bipartisan cooperation will subside. Even if the U.S. prison population decreased an astonishing 50%, more than a million people would still be stranded in overly punitive, under-funded systems that are more likely to harm than to help.

The Swedish example prompts uncomfortable questions on all sides of the U.S. debates. Sweden relies on detention far less often, but what detention entails is far more robust. For conservatives, the Swedish model upends the very institution of incarceration. The fact of detention itself—not the conditions—is the punishment. The goal from the start is reintegration into society, which means the provision of a wide array of services. For leftists, too, however, the Swedish model challenges core assumptions about the relationship between the state and the individual, as a treatment-based corrections system requires trust in state actors and is likely to tread on individual privacy.

Given the enormous scale, the racialized nature, and the entrenched politics of incarceration in the United States, it would be easy to ignore the Swedish experience as utterly irrelevant.

That would be a mistake. Sweden has declared an affirmative but limited vision for incarceration, and it has chosen to invest in that vision to the benefit of incarcerated people and society at large.

In the United States, amidst

all of the debates about

overincarceration, there is no

parallel affirmative vision for

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be—a system that respects the

dignity of each person, staff and

prisoner alike, behind prison

walls; a system that aspires to do

more good than harm

In the United States, amidst all of the debates about

overincarceration, there is no parallel affirmative vision for what prisons should aspire to be—a system that respects the dignity of each person, staff and prisoner alike, behind prison walls; a system that aspires to do more good than harm; a system that recognizes incarcerated people not only for their defaults, but for their strengths; a system that seeks to strengthen not to sever the individual's role in their family, community, and society; a system that declares "you are one of us, and we belong to you."

The time has come for a term that sets our sights higher than "rehabilitation" or "reentry." As I fumble for the right word—reclaiming? belonging?—I am reminded of a quote by Father Gregory Boyle, founder of Homeboy Industries in Los Angeles. To sum up his three decades of working alongside young men and women who have been

involved in gangs, Father Boyle chose the word "kinship":

No daylight to separate us. Only kinship. Inching ourselves closer to creating a community of kinship such that God might recognize it. Soon we imagine, with God, this circle of compassion. Then we imagine no one standing outside of that circle, moving ourselves closer to the margins so that the margins themselves will be erased. We stand there with those whose dignity has been denied. We locate ourselves with the poor and the powerless and the voiceless. At the edges, we join the easily despised and the readily left out. We stand with the demonized so that the demonizing will stop. We situate ourselves right next to the disposable so that the day will come when we stop throwing people away.

Gregory Boyle, Tattoos on the Heart: The Power of Boundless Compassion (Free Press 2011)

We are so conditioned by our current conditions that we cannot see outside the box. We dare not ask ourselves "what if?" My hope is that reformers in the United States will start to become concerned about what happens in prison, not merely how to mitigate the damage done.







Michael Clemente, YLS 2016, Cara McClellan YLS 2015, and Geoff Shaw, YLS 2016 were co-convenors of the 2015 Liman Workshop, Rationing Law: Subsidizing Access to Justice in Democracies.



Paul N. Samuels is Director and President of the Legal Action Center, a nonprofit public interest law firm aiming to prevent discrimination against people with histories of addiction, HIV/AIDS, or criminal histories. Arthur Liman co-founded LAC.



Scott Semple, Commissioner, Connecticut Department of Corrections and Robert Ferguson, George Edward Woodberry Professor in Law, Literature, and Criticism at Columbia Law School and Columbia University



George Camp, Co-Executive Director, Association of State Correctional Administrators and Judith Resnik, Arthur Liman Professor of Law, Yale Law School



A.T. Wall, a graduate of Yale College and Yale Law School, is Director of the Rhode Island Department of Corrections. While serving as President of the Association of State Correctional Administrators (ASCA), Director Wall helped to launch the collaboration between ASCA and the Liman Program; he returned in fall 2013 to Yale Law School to co-teach the Liman Workshop, Incarceration.



Zonke Majodina, Former Member, UN Human Rights Committee and Former Deputy Chairperson, South African Human Rights Commission, with Melissa Louidor '17, Brown Liman Summer Fellow



Mary Bosworth, Professor of Criminology, Oxford, and Emma Kaufman, YLS 2015. Emma is the author of Punish and Expel: Border Control, Nationalism, and the New Purpose of Prisons (Oxford University Press 2015), which she wrote while studying with Mary at University of Oxford.



Dennis Curtis, Clinical Professor Emeritus of Law, Yale Law School



Fiona Doherty, Clinical Associate Professor of Law, Yale Law School and Jamelia Morgan, Liman Fellow 2015–2016



Bonnie Posick, Senior Administrative Assistant; Kathi Lawton, Liman Program Assistant; Katarina Krasulova, Liman Research Associate



Bernie Warner, Secretary, Washington Department of Corrections; Judith Resnik, Arthur Liman Professor of Law, Yale Law School; Rick Raemisch, Executive Director, Colorado Department of Corrections



Tom Bernstein, YLS 1977, Helen Bernstein, Bob Bernstein, Denny Curtis, and Judith Resnik



Ellie Holubova, YLS LLM 2015



Katie Munyan, Yale Summer Fellow 2010, YLS 2017, and Daniel Hessel, Schell Center Student Director, YLS 2016



Helen and Bob Bernstein



Participants, students, Fellows, and faculty at the closing dinner

The Law School's Liman Projects

Through Liman Projects, law students and faculty join in a range of research activities. In the fall of 2015, the Liman Program and the Association of State Correctional Administrators (ASCA) released a report, *Time in Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison*, providing new data on the numbers in forms of isolation in prison and the living conditions in isolation. Below we summarize some of the concerns animating this project and the major findings of this detailed report, which received significant media attention. Available at http://www.law.yale.edu/intellectuallife/limanpubs.htm and at http://www.asca.net/articles/3685.

Time-in-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison

Sarah Baumgartel, Corey Guilmette, Johanna Kalb, Diana Li, Josh Nuni, Devon Porter, and Judith Resnik

Prolonged isolation of individuals in jails and prisons is a grave problem drawing national attention and concern. Commitments to lessen the numbers of people in isolated settings and to reduce the degrees of isolation have emerged from across the political spectrum. Legislators, judges, and directors of correctional systems at both state and federal levels, joined by a host of private sector voices, have called for change, and many jurisdictions are revising their practices.

Although a few in-depth reports and litigation about specific jurisdictions have sounded the alarm, relatively little nation-wide information exists about the number of people held in restrictive housing, the policies determining their placement, how isolated the settings are, and whether degrees of isolation differ across the country.

Therefore, in 2012, the Liman Program at Yale Law School joined with the Association of State Correctional Administrators (ASCA), which is the national organization of the directors of all the U.S. prison systems. We asked the directors of state and federal corrections systems to provide their policies governing administrative segregation, defined as removing a prisoner from general population to spend 22 to 23 hours a day in a cell for 30 days or more. The result, Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies (2013), based on responses from 47 jurisdictions, analyzed the criteria for placement in and release from administrative segregation.

What we learned is that the criteria for entry were broad, as was the discretion accorded correctional officials when making individual decisions about placement. Many jurisdictions provided very general reasons for moving a prisoner into segregation, such as that the prisoner posed "a threat" to institutional safety or a danger to "self, staff, or other inmates." Some but not all jurisdictions provided notice to the prisoner of the grounds for the placement and an opportunity for a hearing. The kind of notice and what constituted a "hearing" varied substantially. In short, at the formal level, getting into

segregation was relatively easy, and few policies focused on how people got out.

In 2014, to learn about the impact of these policies, the Liman Program and ASCA developed a survey of more than 130 questions, again sent to the directors of all the prison systems. Responses came from 46 jurisdictions, although not all jurisdictions answered all the questions. The results provide a unique inter-jurisdictional analysis of the use of administrative segregation around the United States.

A basic question is the number of prisoners in isolation. Commentators have relied on estimates dating back ten years or more and have cited figures ranging from 25,000 to 80,000 prisoners. This report is the first to update those figures; thirty-four jurisdictions, housing about 73% of the 1.5 million people incarcerated in U.S. prisons, provided numbers, totaling more than 66,000 prisoners in some form of restricted housing—whether termed "administrative segregation," "disciplinary segregation," or "protective custody." If that number is illustrative of the whole, some 80,000 to 100,000 people were, in 2014, in segregation. And none of the numbers include people in local jails, juvenile facilities, or in military and immigration detention.

Getting the numbers is new. So is the commitment, nationwide, by correctional officials that these numbers go down dramatically. Directors of prison systems believe that these numbers are or will soon be out-of-date, based on their plans to reduce substantially the use of isolation and change the conditions in it.

In addition to gathering data on the men and women in confinement, this report focused on a subset, the 31,500 male prisoners held in administrative segregation. In terms of the demographics, 21 jurisdictions provided comparative information on general population and the administrative segregation population; Blacks and Hispanics were over-represented in administrative segregation. As for living conditions, the cells were small, ranging from 45 to 128 square feet, sometimes for two people. In many places, prisoners spent 23 hours in their cells

on weekdays and 48 hours straight on weekends. Opportunities for social contact, such as out-of-cell time for exercise, visits, and programs were limited; the time out-of-cell ranged from 3 to 7 hours a week in many jurisdictions. Phone calls and social visits were as few as one per month in several jurisdictions; in others, more opportunities existed. In virtually all jurisdictions, what the prisoners could keep in their cells, as well as their access to programs and to social contact, could be reduced or ended as sanctions for misbehavior.

And in most jurisdictions, there was no fixed endpoint. Only one state imposed a oneyear limit. Several systems did not keep track of the numbers of continuous days a person was held; for the 24 jurisdictions that did, the time spent varied widely. In a substantial number, people remained in segregation for more than 3 years. And, in 30 jurisdictions that kept numbers on release, a total of 4,400 prisoners were released in 2013 from administrative segregation directly to the community.



Timothy Williams, Prison Officials Join Movement to Curb Solitary Confinement, New York Times (Sept. 2, 2015)

Prison directors described the challenges of staffing administrative segregation. Some required additional training and offered flexible schedules, or rotated staff, or provided extra benefits for the assignment. Many directors reported that the incentives for change included prisoner and staff well-being, pending lawsuits challenging their policies, the costs, and, as a few put it, because it "is the right thing to do."

As noted, administrative segregation is not the only form of restrictive housing. Prisoners are also held in close confinement as a disciplinary sanction and for their own protection, neither of which were the focus of this research. Thus, the report offers a window into the practices of one kind of close confinement and

a template for learning about whether the different rationales for restricted housing result in different modes of confinement.

By facilitating cross-jurisdictional comparisons of the rules and practices that surround administrative segregation, this report both reflects and supports ongoing efforts to understand its impact, reevaluate its use, and limit or end extended isolation. In some states, new legislation limits administrative segregation for subpopulations, such as the mentally ill,

juveniles, and individuals with disabilities; many more proposals are pending at the state and national level.

New programs for the mentally ill are mandating that prisoners spend 20 hours a week out of their cells. Lawsuits are attacking particular practices in specific states, and some advocates call for abolition. The 2015 "Mandela Rules," shaped with input from leaders of corrections in the United States and promulgated by the Committee on Crime Prevention and Criminal Justice of the United Nations.

have defined confinement of prisoners for 22 hours or more for longer than 15 days to be a form of "cruel, inhuman or degrading treatment."

Calls for significant reductions in the use of isolation come from all quarters. But without a baseline, it is not possible to know the impact of the many efforts underway to revise policies, so as to reduce or eliminate the isolation of prisoners and to enable prisoners and staff to live and work in safe environments, respectful of human dignity. *Time-in-Cell* provides one measure, to use to assess whether the changes hoped for are taking place, such that the number of persons held in such settings and the degrees of their isolation are substantially diminishing.

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U.S. NEWS

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Study Fuels Doubts Over Solitary Jailing

Jess Bravin, Large Number of Inmates in Solitary Poses Problem of Justice System, Study Says, Wall Street Journal (Sept. 2, 2015)

The Liman Program continues to highlight the particular challenges faced by incarcerated women in the state and federal systems. Below, we excerpt our Statement submitted to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights at its December 9, 2014 hearing, *The State of Civil and Human Rights in the United States*.

Women in Detention: The Need for a National Agenda

Johanna Kalb, Judith Resnik, and Megan Quattlebaum with the assistance of Yale Law Students Emma Kaufman, Devon Porter, and Jennifer Yun

... More than thirty years ago, the House of Representatives Subcommittee on Courts, Civil Liberties, and the Administration of Justice convened a hearing, described then as the first time "that Congress has focused on the problems and needs of women offenders, and particularly those in the Federal Prison System." The Chair of the Subcommittee expressed concern about "charges that women are getting short-changed when it comes to facilities, rehabilitation, health services, and job



Aerial photo of Danbury prison and camp. Source: Wikicommons.

training." The concern voiced in 1979 remains relevant today; decisions about where and how to incarcerate women raise a myriad of civil and human rights issues.

The specific problems faced by women in the federal prison system came into vivid relief when, in July of 2013, the Federal Bureau of Prisons (BOP) announced its plan to convert the Federal Correctional Institution (FCI) Danbury, which was the only FCI in the Northeast for women, into a prison for men. The goal was to provide more space for male prisoners who, like women, are often confined in overcrowded facilities. Under the BOP proposal, many of the women from the Northeast were to be sent to a new federal prison located in Aliceville, Alabama, more than 1,000 miles away.

Because we are based in New Haven, Connecticut, the Yale Law School has had a long relationship—begun in the early 1970s—with FCI Danbury. Therefore, we joined with a host of others in raising objections to the proposal. The concern was that, other than about 150–200 women eligible for assignment to the prison camp at Danbury, no other women sentenced in the federal system from the Northeast would have the possibility of being proximate to their families and communities. In the fall of 2013, Senators Blumenthal, Casey, Gillibrand, King, Leahy,

Markey, Murphy, Sanders, Schumer, Shaheen, and Warren raised questions, as did twelve chief judges of federal district courts in the region, the National Association of Women Judges, and many others. In November of 2013, the BOP announced that Danbury's main facility was still to be converted to a male facility but that the BOP would build an additional facility on the Danbury site with beds for women classified as low security.

In the interim, BOP has relocated the Danbury women,

primarily to jails in Brooklyn, New York, and Philadelphia, Pennsylvania. As of this writing, the schedule for creating space for women at Danbury remains unclear and dozens of post-trial women are in the federal pretrial facilities in Brooklyn and Philadelphia. Because they are not designed to house post-conviction prisoners, these jails have limited programming and do not provide the Residential Drug Treatment Program (RDAP), which helps prisoners deal with drug addiction and provides opportunities to shorten their time in prison.

In short, recent experiences in the federal prison system have made plain the need to bring into focus

the challenges facing women in prison. Below, we provide a brief demographic overview of women in prison and then turn to specific concerns about classification, placement, visiting, health, safety, and work. As we detail, some states are forging new programs, aiming to be responsive to the distinctive paths that women and men take to prison and seeking to offer targeted training programs and opportunities reflective of those differences. Moreover, the National Association of Women Judges has pioneered programs for women in prison. It is our hope that in the coming year, Congress continues to explore the problems facing all prisoners, and that it convenes hearings focused specifically on women in detention.

Women in the Criminal Justice System

According to data from the Bureau of Justice Statistics, as of the fall of 2014, 1,574,000 individuals were incarcerated in the United States in federal and state prisons; more were held in jails. Of the number in prison, 104,134, or 6.6 percent, were women. Moreover, the number of women incarcerated is rising at a rate higher than that of men.

In 2011, the Women Offenders Security Classification Subcommittee of the Criminal Justice Section of the American

Bar Association's Corrections Committee issued a report, *Revising Security Classification Instruments and Needs Assessments for Women Offenders*. It explained:

"Women offenders ... differ significantly from their male counterparts in a number of ways. First, female prisoners are less violent than male prisoners before, during, and after their incarceration. Women are incarcerated primarily for committing non-violent crimes, such as, according to one study, drug offenses (29%) and property offenses (31%). In contrast, 58% of incarcerated men in the same study were in prison because they committed a violent offense. In addition, men continue to be more violent than women once they are in prison: they commit twice as many violent acts of misconduct than women, and their misconduct tends to be more serious....

Second, most women in prison are mothers. Over 70% of women under correctional supervision are mothers of at least one child under the age of 18. As of 2004, women in state prison were more likely (62%) to have children than men (51%). . . . Nearly 80% of women living with a minor child just prior to their incarceration were primarily responsible for caring for their child, as compared to 26% of male prisoners. Female inmates are also more likely to be located farther away from home than male prisoners.

Third, women under correctional system supervision are more likely than male offenders to have experienced physical or sexual abuse prior to being incarcerated....

Finally, female inmates also have different mental health needs than male inmates. Women generally suffer from higher levels of depression, anxiety, and self-injurious behavior, and female offenders are more likely to suffer from mental illness...."

Distance, Visiting, and Families

Women in the federal prison system exemplify many of the problems that the Women Offenders Security Classification Subcommittee identified. As of the fall of 2014, the number of women in the federal prison system was 14,344, or about 6.7 percent. Those women are often incarcerated at great distances from their homes and families, have limited opportunities for targeted programming, face specific issues of safety and health, and may not have the range of work opportunities available to men.

The BOP states that it aims to put inmates within "reasonable" proximity to the areas of their "anticipated release," and it has defined "reasonable" by noting that "[o]rdinarily, placement within 500 miles of the release area is to be considered reasonable, regardless of whether there may be an institution closer to the inmate's release area."

To use five hundred miles as a goal is to put enormous burdens on anyone—family members, lawyers, clergy, or friends—who hopes to visit. Such distances also undermine the ability to plan for jobs or health services for reentry. For example, when we explored the impact of closing off FCI Danbury to women, we learned from the U.S. Sentencing Commission that about ten percent of all the women sentenced in the federal system between October 2011 and September 2012 were sentenced in a federal district court in the Northeast. Further, after concerns were raised about transferring women to remote facilities in the South, the BOP informed Senators that thirty percent of the then-815 Danbury women with identifiable U.S. home addresses were residents of the BOP's Northeast region. While that number was employed to ease concerns about the movement of women away from Danbury, it also raises concerns from another perspective: seventy percent of Danbury inmates with known home addresses were incarcerated in the Northeast despite the fact that the facility was far from their homes and families. Indeed, about nine percent of the women were from Texas, and more than five percent from California.

Those figures correspond with available research on gender disparities and distance. In the 1990s, the Ninth Circuit Gender Bias Task Force found that women in the federal prison system were incarcerated an average of 160 miles farther from their families than their male counterparts. More recently, in a study of a maximum-security state prison, Karen Casey-Acevedo and Tim Bakken found that the majority (61 percent) of mothers had not received any visits from their children, and that "perhaps the most significant determinant of whether an inmate receives visits is the distance between her home county and the prison to which she is committed."

Recognizing the beneficial effects that opportunities to visit can have on prisoners and their families, in 2013, the Department of Justice (DOJ) launched what it terms an "aggressive campaign" to mitigate the harms that incarceration of parents imposes on children. As the DOJ website explained: "We owe these children the opportunity to remain connected to their mothers and fathers." On June 19, 2013, BOP Director Charles Samuels sent a memo to every inmate incarcerated in the federal system in which he encouraged inmates to maintain parental ties. He explained that "there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them."

Questions abound about the implementation of these commitments. In addition to putting prisoners at great distances from their families, limited visiting hours make it hard for those who can travel to visit. Many facilities have visiting on only a few days a week and for certain hours. The short windows of time limit the opportunities for families to stay connected.

Other options exist. Prison policies can promote or discourage visiting, as the chart below, gathered from a review of the policies of most of the states and the federal system, makes plain.

Promoting and Discouraging Prison Visits: Policy Examples from the States

This chart is derived from Chesa Boudin, Trevor Stutz, & Aaron Littman, *Prison Visitation: A Fifty-State Survey*, 32 Yale Law & Policy Review 149 (2013).

ALLOWS VISITING PROMOTES VISITING • No limit on number of visitors on an inmate's list (e.g., Policies accessible online (e.g., South Dakota) • Plain language visitor handbook (e.g., Connecticut) California) • No limit on visiting days (e.g., New York maximum security) Local rules accessible online and clearly posted at each • Overnight family visits (e.g., Mississippi) facility · Virtual visits supplementing, but not replacing, in-person • Promote/encourage visitation in policy (e.g., Colorado) visits (e.g., Oregon) Provide toys in visit room (e.g., Florida) • Provides grievance procedures when visits are terminated/ • Locate prisons near urban populations (e.g., Rhode Island) • Provide subsidized public transit to remote prisons prohibited (e.g., Maine) (e.g., New York) Less restrictive dress codes (e.g., New Mexico) Provide "special" visits for out of state/long distance visitors · Less invasive search procedures (e.g., New York) Allow diaper bags for infants (e.g., North Dakota) (e.g., Alaska) Allow young children to visit without ID (e.g., Arkansas) Provide children's play areas in visiting rooms (e.g., Missouri) Allow inmate-inmate visits (e.g., New Jersey) Allow breastfeeding during visits (e.g., Wisconsin) Allow visits from former felons (e.g., Hawaii) • Define "immediate family" broadly (e.g., Kentucky) **DISCOURAGES VISITING PROHIBITS VISITING** Prohibit toys in visiting room (e.g., New Hampshire) · Limit number of visitors on an inmate's list Restrictive dress codes (e.g., Utah) (e.g., South Dakota) • Limit visiting days/hours (e.g., Virginia) Invasive search procedures (e.g., Texas) • Terminate visits if children misbehave or make noise • Send inmates to prisons far from families/out of state (e.g., Rhode Island) (e.g., federal BOP) • Require multiple forms of ID (e.g., West Virginia) · Prohibit visits from friends of the opposite gender for • Prohibit visitors from being on more than one inmate's list married inmates (e.g., Oklahoma) · Require proof of legal status for noncitizens (e.g., Alabama) · Limit frequency of changes to inmates' visitor lists (e.g., Washington) (recently repealed) (e.g., Mississippi) • Deny contact visits as punishment (e.g., Michigan) • Waiting period for inmates removed from one inmate list • Visits by appointment only (e.g., Delaware) and added to another (e.g., Arkansas) Prohibit visits from persons with a recent drug arrest Require visitors to reapply every year (e.g., Utah) (e.g., Idaho) Prohibit visits from former felons (e.g., Michigan) Prohibit visits from people not known to inmate prior to incarceration (e.g., federal BOP) Limited visiting with minors (e.g., Indiana)

Classification and Gender-Responsive Programming

The question of placement interacts with decisions on classification, which are typically predicated on a mix of an assessment of security needs (or risk) and on how the facility might provide treatment, often described as "programming." In its 2011 report, the Women Offenders Security Classification Subcommittee found that "[m]ost prison systems classify women using the same custody classification assessments that they use for their male prisoners." Yet women present a lower risk of violence while incarcerated; as a result, when relying on criteria developed with men as the baseline, systems "frequently

over-classify women by placing them in more severe custody situations than their actual security risk warrants."

Related to classification is the question of the kinds of programs, activities, and services provided in prisons. The term "gender-responsive programming" denotes the view that prisons ought to tailor programs for men and women to reflect that women and men are convicted of different crimes and that, in light of gendered roles, women and men often have different household responsibilities, education, and work histories. Race, ethnicity, and age also intersect with gender and affect opportunities in and out of prisons.

A few state prison systems have sought to respond. For example, Washington has promulgated policies to "align and prioritize . . . resources to provide evidence based, gender responsive interventions." The interventions include programming that is "trauma informed, strength based, and [that] emphasize[s] building self-efficacy;" providing "services to address gender specific medical and mental health issues;" and training employees in "[g]ender responsive communication skills, including strategies to avoid re-traumatizing those seeking assistance." Moreover, not all such efforts are based in prisons. In Oklahoma, a program initiated in 2009, "Women in Recovery," offers an alternative outpatient program, in lieu of prison, for women facing long sentences related to drug and alcohol addiction. The program provides substance abuse and mental health treatment, as well as education, job training, and family services, and women with young children receive the highest priority for admission.

Safety, Health, and Sexual Assault

Congress has been instrumental in bringing the problem of sexual violence in prison to the fore, with its enactment of the Prison Rape Elimination Act (PREA), creating national standards for safety. Auditing of facilities must take place, to ensure compliance. Given the passage of a decade, Congress should learn how jurisdictions allocate resources to audit and whether attention is paid equally to facilities for men and women. For example, in a May 2013 report, the Bureau of Justice Statistics concluded that women in state and federal prisons suffer higher rates of inmate-on-inmate sexual violence (6.9 percent) than

their male counterparts (1.7 percent). In addition, inquiries should be made into policy changes prompted by PREA. Here the example is PREA standard 115.15(b), which requires that as of August 20, 2015, staff in facilities with more than fifty inmates may no longer perform cross-gender pat down searches of female inmates, absent exigent circumstances. The task is to ensure that, as the standard requires, compliance does not result in a curtailing of inmates' access to programming, visiting, and other activities.

Safety is not limited to safety from sexual assault. Working and living conditions are often of concern, as is access to medical care. Because there are so many more men than women in prison, providing access to professionals trained in women's

health needs is an ongoing challenge for administrators of correctional systems.

Education, Work, UNICOR, and Reentry

Yet another question is how to ensure that both women and men have the full range of opportunities to learn skills and be compensated for work. Once again, the federal prison system offers an example of the kinds of questions that need to be asked. UNICOR is the trade name of Federal Prison Industries, Inc. (FPI), a wholly owned federal government corporation that provides work opportunities to inmates in the federal prison system. UNICOR is a source of some of the best-paid work in that system. Nationwide, 10 of FPI's factories, or 11.49 percent, are located in women's facilities; the remaining 77 of FPI's factories (88.51 percent) are located in men's facilities. Do women and men have equal opportunities to participate in UNICOR's more lucrative industries and gain access to employment upon

release? Sixty percent of the FPI employment opportunities available to women prisoners appeared, from the data received thus far, to fall under the Services business group; in comparison, 12.99 percent of FPI "factories" in men's prisons are service-related. The concern about how work is allocated comes in part from research on the hiring of those released from prison. One study about hiring of those who have been in prison concluded that "the firms most likely to hire ex-offenders were those in the manufacturing, construction, and transportation sectors, that is, firms that likely have fewer jobs requiring customer contact Service industries, in contrast, were by far the least willing."

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From the "Forgotten Offender" to a Focus on Women in Detention

We conclude by underscoring the critical roles that Congress has played in bringing to the fore the problems of sexual misconduct in prison, the need to reduce prison populations, the overuse of administrative segregation and isolation in prisons, and the civil and human rights of prisoners. Given those commitments, Congress can also be instrumental in bringing attention to the issues facing incarcerated women of all colors, ethnicities, and ages. To do so would have a substantial impact on prisoners, their families, and the communities to which prisoners will return.

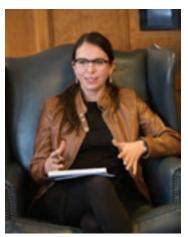
A Window into the Work of Current Liman Fellows

The Liman Program has supported 108 Law School Fellows, who have worked at more than 90 public interest organizations around the country. In the essays below, some of the 2015–2016 Fellows describe their work.

We begin with comments by Alyssa Work, Burke Butler, and Matt Vogel, who reflect on their projects, aiming to increase access to bail, to expose the overuse of solitary confinement, and to improve the quality of counsel for defendants facing the death penalty. Alyssa details her experience working as a bail bondsperson in New York City. Burke explains how her study of solitary confinement in Texas prisons has helped to spur legislative change to limit the practice. Matt describes how a focus on capital representation is contributing to the to the revitalization of public defender services in New Orleans in the wake of Hurricane Katrina.

The essays from Josh Bendor, Dana Montalto, Adrien Weibgen, and Molly Weston highlight the diversity of strategies they employ as they seek to help immigrants, veterans, and low-wage workers and their families. Josh explains how the contempt proceedings against Sheriff Joe Arpaio became a significant part of his work to enforce a federal court order preventing the Sheriff's office in Phoenix, Arizona from engaging in discriminatory policing. Dana draws attention to the growing population of veterans who, if they do not receive an honorable discharge, have difficulty gaining access to healthcare, employment, and housing. Adrien discusses the challenges and opportunities in organizing communities affected by urban development. Molly describes her efforts to help educate New Yorkers, who now have rights to paid sick leave benefits.

Taking On New York's Broken Bail System by Becoming a Bail Bondsperson



Alyssa Work

Liman Fellow 2013–2015, The Bronx Freedom Fund, New York, New York

In New York City, more than 50,000 people a year sit in jail for weeks or months before trial because they can't afford to pay bail. For more than 10,000 of them, the amount of money they would have to pay to go home is \$1,000 or less. But in the South Bronx—the poorest Congressional

district in the country—any amount of money bail is often out of reach for defendants and their families. Our organization, The Bronx Freedom Fund, tries to fill that gap: we are a nonprofit, revolving bail fund that provides direct bail assistance to New Yorkers who are too poor to afford bail in misdemeanor cases. Since opening, we have posted bail for 250 people. The goal of the bail fund is twofold: to allow our clients to maintain stability in their lives after an arrest and fight their cases on equal footing with those who can afford bail; and to use data from our project to advocate for an end to the use of money bail in New York.

As the Project Director of the Freedom Fund, I see the effects of cash bail that is set out of the reach of families in poverty every day. When a judge sets bail at \$500, he or she may believe that amount is a 'low' bail, easily paid by a family member or friend to ensure the person's return to court. But the reason our program exists is that the system doesn't usually work that way. What usually happens is that I meet clients in the concrete

pens downstairs at Bronx Criminal Court; they are panicked and scared, and tell me that nobody is coming to pay their bail. For them, their options are suddenly very limited: plead guilty as soon as possible to get out of jail, or make the excruciating decision to turn down a plea and stay in jail for weeks or months awaiting trial.

Inability to pay bail turns on its head the framework of "innocent until proven guilty." Guilty pleas are easily extracted from those who are in jail. A recent report by Human Rights Watch found that of people charged with misdemeanors who were detained pretrial, 92 percent were convicted. If released or out on bail, only 50 percent were convicted. Of our clients whose cases are now closed, more than half of them saw all charges dismissed—meaning they would have sat in jail on charges that were later found to be without a basis.

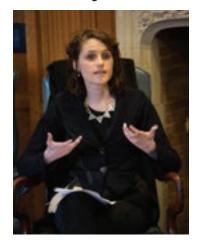
Bail is meant to secure a defendant's appearance at court. But in its current form it sweeps in thousands of people who would appear in court but can't afford the chance to demonstrate that they will do so. Ninety-seven percent of our clients have made every required court appearance. City-wide, 92 percent of misdemeanor defendants appear in court on their court date or voluntarily within 30 days. "Risk of flight" in misdemeanor cases is usually an issue of communication. In our experience, reminders about court and schedule coordination almost always ensure appearance.

The conversation around bail in New York City and New York State has become urgent following the steady stream of horror stories out of Rikers Island detailing solitary confinement, violence, abuse by corrections staff, and abysmal medical care; and following the suicide of Kalief Browder, who was jailed for three years without a trial—initially on bail his family could not afford.

The city is exploring several options to reduce the number of people incarcerated on bail for low-level offenses; I testified on behalf of the Freedom Fund at a June City Council hearing about the need for bail reform. One avenue is to encourage the use of alternative forms of bail: unsecured bonds, which are provided

for under the current bail statute but never used, would eliminate some of the wealth-based inequity of the current system. Another reform is to establish a citywide bail fund, similar to the Freedom Fund, that would be available to low-level misdemeanor defendants. Several pretrial diversion pilot projects in the city are underway. But something must be done, and soon. The current bail system, which Chief Judge Jonathan Lippman has called "totally ass-backwards in every respect," is unjust, financially irresponsible, and overdue for change.

A Solitary Failure: Texas's Failed Practice of Solitary Confinement



Burke Butler

Liman Fellow 2013–2015, Texas Defender Service, Houston, Texas

During my Liman fellowship, I authored a report on solitary confinement in Texas prisons with the ACLU of Texas, called *A Solitary* Failure. The report was based on eight months of research, information-gathering, and interviews with prisoners, their families, correctional officers, security specialists,

and mental-health professionals. A Solitary Failure documented the profound damage solitary confinement inflicts on people and on our communities.

Six thousand people live in solitary-confinement cells in Texas state prisons. The cells are sixty square feet in size; their length can be crossed in six paces. If a prisoner inside spreads his arms to their full wingspan, his fingertips almost graze the walls. The walls and floor are made of concrete. Prisoners in solitary are not even allowed to hang a calendar on the walls to keep track of the days. The lucky ones have a "window"—a thin slit of glass, a couple of inches thick, high up on the wall, through which the daylight filters. The unlucky ones have no window at all. The cell door is made of solid metal, with a slot for a food tray, and two thin Plexiglas rectangles through which the officers can peer to make sure the prisoner inside has not committed suicide.

Solitary confinement deprives people of almost all human contact. People in Texas solitary cells do not share their meals with others; instead, they eat in their cells, sitting on their beds or on the floor, with the tray propped up on the toilet. People in Texas solitary cells cannot call their children, spouses, or loved ones. They sleep on a metal plank covered with a thin mattress, with their head a few inches from the toilet bowl. They rarely see another person's face, or look another person in the eyes. For weeks at a time, their only human contact may be the hand of a correctional officer, sliding their food tray through the slot in the cell door. People in solitary confinement have no opportunity for self-betterment. They cannot attend religious services to

practice their faith with other people. They cannot earn their high school or college degrees, or learn trades so they can one day step into the role of breadwinner for their family. They cannot attend Alcoholics Anonymous to help them overcome lifelong addictions. They leave their cells only for an hour a day to exercise in a small caged space not much larger than their cells and covered in bird feces. They cannot even watch TV to pass the time.

These conditions do not persist for a few days, or weeks, or even a couple of months. The average stay in a Texas solitaryconfinement cell is four years.

Solitary confinement causes immense suffering and lasting human damage. Suicide is nine times more likely in Texas solitary cells than in general population. Studies have found that solitary confinement inflicts profound mental harm that persists long after release. A third of people in Texas solitary confinement cells have a diagnosed mental illness, which makes them all the more vulnerable.

As thousands of people waste away in Texas solitary cells, Texas communities suffer. Ninety-five percent of prisoners are released to our communities one day, and nearly 1,243 people were released from solitary confinement cells directly into Texas communities in 2013. Yet people in solitary-confinement cells are deprived of the human connectedness and opportunity for self-betterment so vital to helping them resume the roles our society expects of them upon their release from prison—as parents, spouses, breadwinners, citizens, and neighbors. Solitary confinement wastes precious human potential: Damaged by their years in isolation, people released from Texas solitary cells into their communities have a twenty-five percent higher recidivism rate.

Solitary confinement also wastes taxpayer money: Texans pay \$47 million a year above normal correctional costs to house people in solitary. And solitary confinement appears to make Texas prisons less safe: The Texas correctional officers' union attributed the rise in serious assaults on correctional officers in the last seven years—by a factor of 104 percent—to the overuse of solitary confinement. And almost eighty percent of the 499

instances of prisoners exposing officers to bodily fluids in 2013 occurred in solitary-confinement units.

We delivered the report, A Solitary Failure, to Texas legislators in February 2015. The report brought national attention to the issue of solitary confinement in Texas prisons, and opened up a dialogue in Texas about how our prison system is failing all of us. Legislators took a first step toward reforming Texas's use

of solitary confinement in the 2015 legislative session: They voted to enact legislation that would require a mental-health assessment of prisoners in solitary confinement and require their exclusion from solitary confinement if the assessment determined that such confinement would not be appropriate for their mental health. Governor Abbott signed the solitary-confinement bill into law on June 17, 2015.

Strengthening Capital Defense Reform in Louisiana



Matt Vogel

Liman Fellow 2014–2016, Orleans Public Defender, Capital Division, New Orleans, Louisiana

There may be downturn in capital verdicts juries nationwide, but throughout Louisiana continue to hand down capital sentences. Although there have been few death sentences in Orleans Parish in the recent past, capital arrests and indictments continue, and prosecutors

still bring capital cases to trial. Nearly all of the defendants in these capital cases have appointed counsel. I work at one of the agencies that represents them at trial: the Capital Division at Orleans Public Defenders (OPD), the public defender agency in New Orleans.

Historically, Louisiana has had some of the worst public defense in the nation. Until recently, public defenders in Orleans Parish were part-time, and public defense was funded exclusively with city funds from traffic tickets. Consequently, public defenders rarely met with their clients; they had no phone numbers; there were no files; and clients could not come to the office. Public defenders generally did not even visit crime scenes, interview witnesses, investigate alibis, utilize experts, or review evidence. Public defenders were assigned not to particular clients, but to particular courtrooms. It should come as no surprise that Louisiana has had one of the highest rates of wrongful conviction in the country.

After Hurricane Katrina exposed this crisis in indigent defense, OPD was created in an effort to transform the Louisiana public defender system; it quickly became a model for reform across the state. Since then, OPD has worked diligently to bring to Orleans Parish a level of representation better than the highest professional and ethical standards. Every day, OPD staff fight for their clients in a criminal justice system which is still heavily resistant to strong and effective public defense.

It is in this context of reform that the Capital Division was created in late 2012. After Hurricane Katrina, OPD leadership discovered that some individual part-time public defenders were handling as many as twenty capital cases each. The result of this was the arbitrary—and often erroneous—application of capital punishment. In contrast, OPD's Capital Division was designed to bring the same high level of representation to capital defendants that the office now brings to each of its other cases.

My work is to develop the Capital Division's litigation resources, both in the context of our pending cases and with a broader, more systematic focus. Working with experts when appropriate, I have crafted motions litigating an assortment of *Brady*, discovery-related, and other evidentiary issues, as well as several mitigation matters. In addition, I'm working on litigation concerning structural legal issues applicable to all of our cases, some specifically related to Orleans Parish, and others related to Louisiana's capital punishment scheme more generally. Capital cases are exceedingly complex—not only legally, but also in terms of facts and mitigation—and litigation is a crucial tool for shaping the narratives at play not only as cases develop, but also if they go to trial.

My goals are both to help the Capital Division develop as it gets off the ground, and to assist OPD to cement a high level of practice in litigation beyond capital cases. For example, in Miller v. Alabama, decided in 2012, the Supreme Court declared mandatory life without parole (LWOP) sentences for juveniles unconstitutional, and required courts to consider factors related to childhood and adolescent development when sentencing in such cases. OPD is determined to bring to its Miller cases the same high level of investigation, litigation, and mitigation that it brings to its capital cases. Accordingly, I have also begun working to provide litigation support to the attorneys representing Miller clients.

As the public defender in New Orleans, OPD must have the capacity to represent defendants facing a potential death sentence and juveniles facing a potential LWOP sentence with the skill, compassion, and creativity that their complex cases require. The Liman Program's support has been absolutely critical in developing OPD's capacity to take on these cases and fight for these extraordinarily vulnerable people.

Fighting Back in Arizona



Josh Bendor Liman Fellow 2014–2015, ACLU of Arizona, Phoenix, Arizona

Although not formally

about compliance with the

permanent injunction,

the contempt proceedings

and the associated scrutiny

have helped put a stop to

Arpaio's public defiance of the

Court and to ensure that the

structural injunction is obeyed.

Since 2006, Sheriff Joe Arpaio and the Maricopa Office County Sheriff's (MCSO) become have synonymous with local efforts to make life hard on undocumented immigrants. From the beginning, those efforts have been marked by racial discrimination and disregard for the law,

including through MCSO's policy of using race to decide where to conduct its "saturation patrols," which drivers to stop, and whether to question those drivers or their passengers about their immigration status.

But also from the beginning, the Latino and civil rights community has fought back. In 2007, Manuel de Jesus Ortega Melendres filed a damages action after he was unconstitutionally stopped detained by MCSO. In 2008, Ortega Melendres v. Arpaio became a class action for injunctive relief. In 2011, Judge G. Murray Snow of the District of Arizona preliminarily enjoined MCSO from detaining any person solely based on immigration status. In May 2013, after a bench trial, Judge Snow concluded that MCSO's immigration enforcement efforts were pervaded by racial bias, and in October 2013, Judge Snow issued a detailed, structural injunction to remedy the harms to the plaintiff class. A large part of my Liman proposal was to join the team of

Plaintiffs' attorneys, most of whom were located out-of-state, in ensuring that MCSO complied with the injunction and began to reform itself.

In August 2014, when I began my Liman Fellowship at the ACLU of Arizona, compliance with the injunction was in the early stages. Judge Snow had appointed a Monitor. A critical element of the Court-ordered reforms, training on bias-free policing and the Fourth Amendment, was about to begin after lengthy negotiation about the content of the trainings.

At the same time, the past year had been marked by shows of defiance by Arpaio and his top commanders at the MCSO, both

in public and behind closed doors. And the May 2014 suicide of an MCSO deputy who had been a key witness at trial sparked disturbing new revelations about MCSO's notorious Human Smuggling Unit (HSU), including that HSU members routinely seized identification and credit cards from the people it detained, most of them Latino, and that HSU regularly recorded traffic stops yet failed to produce those records during discovery.

These events led to the further revelation that MCSO had made essentially no effort to comply with Judge Snow's 2011 preliminary injunction against detentions based on immigration status. As a result of these developments, contempt proceedings were instituted against Arpaio and certain of his top commanders. During contempt discovery, Arpaio and his second-in-command twice moved to vacate the hearing by admitting contempt. But discovery and the contempt hearing continued

as scheduled to gather information on the facts that gave rise to the contempt, the contemnors' states of mind, and the requisite remedy.

In April 2015, after we took extensive discovery, including numerous depositions, Judge Snow held four days of hearings, at which MCSO officers testified that Arpaio ordered them to detain people based solely on immigration status. Plaintiffs introduced Arpaio's public statements to show his continued interest and involvement immigration enforcement that ran contrary to the requirements of the preliminary injunction. In a dramatic and much-reported moment, Arpaio also testified that his office had, since 2013, twice investigated Judge Snow and his family. Although the contempt hearing was initially

scheduled to continue in June 2015, those continued hearings were delayed after Defendants filed a desperate motion for recusal, which was denied.

The contempt proceedings became a surprising and central part of my fellowship. Although not formally about compliance with the permanent injunction, the contempt proceedings and the associated scrutiny have helped put a stop to Arpaio's public defiance of the Court and to ensure that the structural injunction is obeyed. In the end, the contempt proceedings are likely to be one stretch in the long road to ensuring that the MCSO becomes a constitutional and professional law enforcement agency.

Turned Away: VA's Denial of Care and Due Process to Veterans



Dana Montalto, Liman Fellow 2014–2016, Veterans' Legal Clinic at the Legal Services Center and Home Base Program, Boston, Massachusetts

When a 22-year-old Marine first returned from a deployment to Afghanistan, he thought that he could handle his Post-Traumatic Stress on his own, occasionally using marijuana to quell his anxiety and tension. When he eventually realized that

he needed professional help and went to a Veterans Affairs hospital for treatment, the hospital told him that he was not eligible for care there, because his in-service drug use had led to a less-than-honorable discharge.

The U.S. Department of Veterans Affairs regularly denies healthcare and benefits to less-than-honorably discharged veterans in violation of its own policies and regulations. The agency defines "veteran" more narrowly than the colloquial definition of someone who served in the armed forces and then applies an even narrower definition that excludes hundreds of thousands of veterans from the care and support that their service earned.

As background, every enlisted servicemember who leaves the armed forces receives a "character of service," also known as "discharge status": honorable, general, other-than-honorable, bad conduct, dishonorable, or uncharacterized. Military regulations establish guidelines for characterization, but commanding officers have broad authority over the characterization assigned. The majority of servicemembers are honorably discharged. Yet, a significant percentage—including three percent of those who served during the Vietnam War era and approximately ten percent of those who have served in the post-9/11 era—receive other-than-honorable, bad-conduct, or dishonorable discharges.

Once servicemembers leave the military, they encounter a new bureaucracy whose inquiry into character of service is the reverse of the military's. VA asks not whether the service was honorable, but whether it was "other-than-dishonorable." Subject to other conditions, a "veteran" for VA's purposes must have served "other-than-dishonorably."

The law establishes adjudicatory processes to determine whether a veteran with an other-than-honorable, bad conduct, or even dishonorable discharge served "other than dishonorably." However, in practice, that adjudication rarely happens. What is more, regulations specifically instruct VA to provide healthcare to veterans with other-than-honorable discharges for service-connected injuries.

Yet, time and time again, we hear of former servicemembers trying to get treatment at VA hospitals and clinics and being turned away at the front desk merely because of the military-assigned character of service, without reference to VA's regulations and procedures. Some went there seeking treatment for Post-Traumatic Stress, suicidal ideation, or other mental-health conditions. Some needed to refill necessary prescriptions. Others simply wanted the routine medical care that they thought their service had earned them.

Studies have shown that less-than-honorably discharged veterans are more likely to be homeless, more likely to be incarcerated, and twice as likely to commit suicide than other veterans. Because of their discharge status, they are likely to face barriers to finding stable employment and housing. They are therefore the population most in need of VA's healthcare, rehabilitation, housing, and other supportive programs. VA's failure to care for those veterans allows their problems to compound and then shifts the burden of care onto state and local organizations.

Through training and education, VA could fix the first-order problem of less-than-honorably discharged veterans being improperly turned away at the front door without the process that they are due. It is also within the power of VA—and within the power of Congress—to change the law to grant less-than-honorably discharged veterans easier access. That would not be unprecedented. After the Vietnam War, Congress established community-based Veterans Centers to provide readjustment and counseling services to combat veterans, regardless of discharge status.

At the Veterans Legal Clinic in Boston, and supported by the Liman Program, I represent less-than-honorably discharged veterans in petitions to change their discharge statuses or to overcome barriers to benefits in state and federal veterans programs. Our clients include a Vietnam War era veteran who received a less-than-honorable discharge for being a "Class II Homosexual," and a veteran who was sexually assaulted by another service member, then began to abuse alcohol, and was discharged under other-than-honorable conditions for failing to complete an alcohol treatment program.

Successful representation can ease or eliminate the impact of discharge on individual veterans, but it cannot address the underlying problem that is systemic in origin and requires a holistic, national solution. Accordingly, in partnership with other veterans advocacy organizations, the Veterans Legal Clinic is pursuing reform initiatives to ensure due process for everyone who served.

Our government's decision to go to war carries with it an obligation to care for the injuries of the servicemembers who fight in that war. As the agency tasked with caring for "those who have borne the battle," VA must ensure that other-than-dishonorably discharged veterans are not turned away from the treatment and support that they earned through their service.

Development, Not Displacement: Fighting for Equitable Neighborhood Change in NYC



Adrien Weibgen

Liman Fellow, 2014–2016, Urban Justice Center, New York, New York

People who have lived and worked in a community for a long time have a right to stay there, and a right to have a say in the future of their neighborhood. This isn't a radical idea—but all too often, the voices of lowincome people, immigrants, and people of color are ignored when private

developers or public officials decide they know what's best for a community. I am working with the Community Development Project (CDP) of the Urban Justice Center to make sure that

residents who have built communities, paid property taxes, operated small local businesses, and lived their whole lives in under-resourced areas are not pushed out in the name of "progress." My Liman Fellowship has enabled CDP to expand significantly its work around issues related to land use, development, and neighborhood change, and right now, I am one of the only public interest attorneys in New York who work fulltime on these matters, despite the high level of need. The work is challenging and exciting, and I hope to keep doing it for many years to come.

Much of my work is based in communities that are being sited for rezonings—areas that have become ground zero in the fight for equitable

development. The City has set a goal of building 80,000 new units of affordable housing over the next decade, and to do it, the City has announced that it will rezone and allow significantly more building in up to 15 neighborhoods. Although the communities we work with would welcome more affordable housing and are hopeful about the new resources a rezoning might bring, many people are concerned that these rezonings will not bring real benefits for current residents, but will instead displace longtime residents and remake these neighborhoods to attract wealthier people, as has happened after many past rezonings, such as Williamsburg.

I am working with local community-based organizations and coalitions to ensure that longtime local residents are real partners in the rezoning process and that development brings more jobs, services, affordable housing, and other opportunities to the people who need them most. I identify zoning tools and other legal mechanisms to advance community goals, share best practices and lessons learned from past organizing campaigns around rezonings, and support community coalitions in developing concrete policy asks around neighborhood rezonings. Working with other technical assistance providers with expertise in community planning, affordable housing development, and other issues of critical concern to communities, I am providing

the legal support groups need to

Organizing around rezonings is difficult—rezonings are a technical process that can seem removed from people's everyday lives, and going up against the City and private developers is a daunting task. But I am inspired every day by the dedicated organizing that is going on in communities like East New York, and the impact that such organizing is having. Just a few days ago, the City announced that half of all housing built over the next 15 years in East New York will be made affordable to local residents, including many units

set aside for families of three making between \$23,000 and \$46,000 a year. There is still a long way to go to ensure that this promise is kept and that the community's other goals are met, but in a city where affordable housing has often been 20% or less of the total and affordability levels are often set far above what people in the neighborhood can afford, this is a huge win. It wouldn't have come without the advocates on the ground who are fighting to make sure longtime lowincome residents are heard in the process—and I am honored to play a part in supporting these fights.

influence effectively the rezoning process and ensure that the needs of local people are met, now and in future.

Much of my work is based in communities that are being sited for rezonings—areas that have become ground zero in the fight for equitable development.

Policy, Programming, and Practice: Protecting Low-Wage Workers



Molly Weston

Liman Fellow 2014–2016, A Better Balance, New York, New York

As a Liman Fellow at A Better Balance, a New York-based national nonprofit that helps working people care for themselves and their families without compromising their economic security, I do a little bit of everything. As the lead attorney on our outreach efforts, I travel

all around New York City informing low-wage workers and partner organizations about laws like the Earned Sick Time Act and the Pregnant Workers Fairness Act. I've led workshops or presentations in every borough except Staten Island and worked with social service providers, LGBT groups, and a range of health organizations. I also provide legal support to cities and states around the country looking to pass paid sick time and paid family leave laws; since starting as a fellow last September, I've helped with campaigns in eleven states, and the number keeps growing.

What drives all of the work at A Better Balance is our clinic, which provides direct legal services and advice to low-wage workers in New York City and around the country. I work to enforce the Earned Sick Time Act, which went into effect in April 2014 and gives 3.4 million working New Yorkers the right to take job-protected time off, usually paid, when they or their families are sick, injured, or getting medical treatment (including mental health and preventive care).

Through our free legal hotline, I answer worker questions and give advice, particularly to help workers effectively advocate for themselves with their employers. For those who need more assistance, I help workers file administrative complaints with the Department of Consumer Affairs or attempt to negotiate directly with employers. The violations I deal with range from employers not paying workers for their sick time to illegally firing employees for taking (or trying to take) sick time; many employers falsely tell employees that the law does not apply to them at all. This work is critical to ensure that the hard-won right to sick time in New York City is not just a paper protection, but an enforced and respected right for low-wage workers.



Current Liman Fellows Molly Weston, Dana Montalto, and Adrien Weibgen share insights gained from their fellowship year.



Jessica Vosburgh, Liman 2014–2015 catches up with Alyssa Work, Liman 2013–2015



Caitlin Mitchell, Liman 2013–2015 and Rupali Sharma, Bernstein 2012–2013



Jessica So, Robina Fellow 2015–2016; James Shih, Robina Fellow 2014–2015; Clare Ryan, Robina Fellow 2014–2015; Leah Zamore, Robina Fellow 2014–2015; James Silk; Bob Bernstein; Stephanie Kim, Bernstein Fellow, 2014–2015; Megan Corrarino, Bernstein Fellow 2014–2015; Kyle Delbyck, Bernstein Fellow 2014–2015; Tienmu Ma, Robina Fellow 2014–2015

Liman Program Updates

Sarah Baumgartel, New Senior Liman Fellow in Residence



The Liman Program is delighted to announce that Sarah Baumgartel joined us in July of 2015 as a Senior Liman Fellow in Residence. Sarah was an Assistant Federal Defender in the Manhattan office of the Federal Defenders of New York, where she had worked since 2008; she represented clients charged with criminal offenses

at both trial and appellate levels. She was also a Lecturer in Law with Columbia Law School's Legal Practice Workshop. Prior to joining the Federal Defenders, Sarah was an associate at Spears & Imes LLP and at Akin Gump Strauss Hauer & Feld, where her practice focused on white-collar defense and civil litigation. A graduate of Duke University and Harvard Law School, Sarah clerked for the Honorable Bruce W. Kauffman in the Eastern District of Pennsylvania. She is the author of Nonprosecution Agreements as Contracts, 2008 Wis. L. Rev. 25 (2008), and The Crime of Associating With Criminals?, 97 J. Crim. L. & Criminology 1 (2006).

The Liman Project on Prosecutorial Accountability: Senior Liman Fellow in Residence, Laura Fernandez



Laura Fernandez, Senior Liman Fellow in Residence, joined the Law School in the fall of 2014; her focus is on prosecutorial accountability. The goals of her project include helping to deepen an understanding of prosecutorial misconduct, when it occurs, both within and beyond the legal profession; to reshape behaviors to alter prosecutorial

practices so as to buffer against misconduct; and to encourage public debate about the dangers inherent in an adversarial system that affords prosecutors often unchecked discretion and authority. Laura has studied cases of profound, systemic prosecutorial misconduct in a variety of jurisdictions in order to better understand the incidence of such misconduct and its ramifications. In 2015–2016, Laura will be co-teaching the Liman Project, *Criminal Justice: From Prosecution to Prison*.

New Work for Former Liman Senior Fellows and Directors: Deborah Cantrell, Mary Clark, Fiona Doherty, Megan Quattlebaum, and Sarah Russell



Deborah J. Cantrell, Liman Director 2001–2007, serves as Associate Professor of Law and Director of Clinical Programs at University of Colorado Law School. She was tenured in 2012. Professor Cantrell focuses on issues related to lawyers and social change, including investigating the ways in which lawyers rely on value systems to create and

understand their roles and to develop practical wisdom. Her recent publications include *Re-Problematizing Anger in Domestic Violence Advocacy*, 21 AM. U. J. GENDER SOC. POLY & L. 837–63 (2013).



Mary L. Clark, Liman Director 1999–2001, was appointed in March 2015 to serve as Dean of Academic Affairs and Senior Vice Provost for American University. Professor Clark holds a faculty appointment in the American University Washington College of Law, where she began her teaching career in 2002. In 2009, she was named Washington

College of Law Teacher of the Year and she was appointed to full

professor in 2012. Her administrative experience at WCL has included appointments as Acting Director of the Law and Government Program, and Associate Dean for Faculty and Academic Affairs.



Fiona Doherty, Senior Liman Fellow in Residence 2011–2012, received the Yale Provost's Teaching Prize for 2013–2014. The prize recognizes untenured Yale faculty who exemplify excellence in teaching. Nominations for the award are made by deans and department chairs and, together with information from student evaluations, are used to

select ten prize recipients throughout the University each year. The citation for Doherty's award stated that she is "an extraordinarily gifted teacher . . . She shines in the weekly seminar component of each clinic, and is a conscientious, compassionate supervisor of fieldwork, which includes representation of misdemeanor defendants in New Haven Superior Court, disabled veterans in public benefits cases, and veterans' organizations in legislative and regulatory advocacy."



The 2013–2014 Senior Liman Fellow in Residence, Megan Quattlebaum, was appointed, effective January 2015, to serve as the inaugural Program Director of the Justice Collaboratory at Yale Law School, a new initiative directed by Tracey L. Meares, Walton Hale Hamilton Professor of Law, and Tom R. Tyler, Macklin Fleming Professor of Law and

Professor of Psychology. Funded by a major grant from the Department of Justice, the Collaboratory is designing and implementing programs to improve trust between law enforcement and the community in six cities around the country. The program builds upon research on procedural justice, implicit bias, and race and reconciliation. On April 16 and 17, 2015, the Justice Collaboratory hosted a two-day conference titled *Policing Post-Ferguson*, which brought together police chiefs and other law enforcement officials, community activists, journalists, prosecutors, defense attorneys, and representatives from the Department of Justice. The conference was co-sponsored by the

American Constitution Society, the Arthur Liman Public Interest Program, the Asian Pacific American Law Students Association, the Black Law Students Association, the Institution for Social and Policy Studies at Yale University, the Latino Law Students Association, the Muslim Law Students Association, the Native American Law Students Association, OutLaws, the South Asian Law Students Association, the Women of Color Collective, and the Yale Law School Democrats.



Sarah French Russell, Liman Director 2007–2010, was tenured at Quinnipiac University School of Law in 2015. Professor Russell co-directs the Civil Justice Clinic and focuses on sentencing policy, prison conditions, prisoners reentry issues, professional ethics, and the problems of access to justice. She serves on Connecticut's Committee on

Judicial Ethics. In 2013, she was named a "New Leader in the Law" by the Connecticut Law Tribune.



Emily Gerrick, Liman Fellow 2014–2015; Caitlin Mitchell, Liman Fellow 2013–2015; Anna Arkin-Gallagher, Liman Fellow 2014–2016; Fiona Doherty, Clinical Asociate Professor of Law; Alyssa Work, Liman Fellow 2013–2015.



Katie Chamblee, Liman Fellow 2013–2015; Burke Butler, Liman Fellow 2013– 2015; Laura Fernandez, Senior Liman Fellow in Residence; Matt Vogel, Liman Fellow 2014–2016



Jamelia Morgan, Liman 2015–2016, will spend her fellowship year at the ACLU National Prison Project in Washington D.C.



Mike Wishnie, Deputy Dean for Experiential Education and William O. Douglas Clinical Professor of Law, moderates a panel of current Liman Fellows discussing their perspectives on public interest lawyering.



Monica Bell, Liman Fellow 2010, studies how low-income and marginalized communities interact with the criminal justice system through her doctoral work at Harvard's Sociology and Social Policy Program. In Fall 2015, Monica returned to Yale as a Research Associate in Law with the Justice Collaboratory

Publications by Liman Faculty, Students, and Fellows

Chesa Boudin, Trevor Stutz, and Aaron Littman, *Prison Visitation Policy: A Fifty-State Survey,* 32 Yale Law & Policy Review 149 (2013) (excerpted in Ira P. Robbins, 2 *Prisoners and the Law* ch 17H (Thomson Reuters, 2015).

Deborah Cantrell, *Are Clinics a Magic Bullet?*, 51 Alberta Law Review 831 (2014)

Michael Clemente, Note: A Reassessment of Common Law Protections for 'Idiots,' 124 Yale Law Journal 2680 (2015)

Stacie Jones, *Using Anti-trafficking Laws to Advance Workers' Rights*, Clearinghouse Law Review (May 2015) (with Spring Miller)

Johanna Kalb, *Human Rights Advocacy in the United States* (West Academic 2014) (with Martha F. Davis and Risa Kaufman)

Emma Kaufman, Punish and Expel: Border Control, Nationalism, and the New Purpose of Prisons (Oxford University Press 2015)

Cara McClellan, What Tahj Blow's Police Encounter Reveals
About Student Activism in the #Blacklivesmatter Movement,
Huffington Post (Mar. 30, 2015)

Mekela Panditharatne, When Is the Use of Force by Police Reasonable, The Atlantic (July 17, 2015)

Judith Resnik

Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights, 124 Yale Law Journal 2804 (2015)

Epistemological Doubt and Visual Puzzles of Sight, Knowledge, and Judgment: Reflections on Clear-Sighted and Blindfolded Justices (with Dennis E. Curtis), in Genealogies of Legal Vision (Peter Goodrich and Valérie Hayaert, eds., London: Routledge, 2015)

Reinventing Courts as Democratic Institutions, Daedalus:
Journal of the American Academy of Arts and Sciences 9
(Summer 2014), in the volume, Inventing Courts (co-edited with Linda Greenhouse)

The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75, 162 Pennsylvania Law Review 1793 (2014) Sarah French Russell, *Jury Sentencing and Juveniles: Eighth Amendment Limits and Sixth Amendment Rights,* 56 Boston
College Law Review 553 (2015)

Diala Shamas

Stop spying on American Muslims who dare to express their opinions, The Washington Post (Aug. 4, 2014) (with Nermeen Arastu)

No-fly list a Kafkaesque web, CNN.com (Oct. 3, 2014) (with Susan Hu)

Charisa Smith

Unfit Through Unfairness: The Termination of Parental Rights
Due to a Parent's Mental Challenges, 5 Charlotte Law Review
377 (2015)

The Conundrum of Family Reunification: A Theoretical, Legal, and Practical Approach to Reunification Services for Parents with Mental Disabilities 26 Stanford Law & Policy Review 307 (2015)

Finding Solutions: Preventing the Termination of Parental Rights Due to a Parent's Mental Challenge, 39 Law & Psychology Review 205 (2015)

Allegra McLeod

Prison Abolition and Grounded Justice, 62 UCLA Law Review 1156 (2015)

Regulating Sexual Harm: Strangers, Intimates, and Social Institutional Reform, 102 California Law Review 1553 (2014)

Geoffrey Shaw, Note: Class Ascertainability, 7 Yale Law Journal 2202 (2015)

Sofia Yakren, Removing the Malice from Federal 'Malicious Prosecution': What Cognitive Science Can Teach Lawyers About Reform, 50 Harvard Civil Rights Civil Liberties Law Review 359 (2015)

Adrien Weibgen, Note: The Right to be Rescued: Disability Justice in an Age of Disaster, 124 Yale Law Journal 2406 (2015)

The 2014-2015 Fellows

Last year's Liman fellows, including eight new fellows and four who received extensions, worked in Arizona, Alabama, Boston, New Orleans, Georgia, Texas, and New York on projects related to criminal justice, incarceration, community development, immigration, workers' rights, and veterans' rights. Five members of the 2014 class have received extensions to continue for a second year, and they will receive substantial support from their host organizations.



Anna Arkin-Gallagher joined the Louisiana Center for Children's Rights (LCCR) to provide civil legal services to young people involved in the New Orleans juvenile justice system. She has received an extension to spend a second year with LCCR to create and staff legal clinics for young people in the New Orleans community and to shape a

new project addressing the educational needs of youth held in pretrial detention. Anna, who graduated from Yale College in 2004 and from Yale Law School in 2009, previously worked in the Civil Action Practice of the Bronx Defenders. There, she provided comprehensive civil legal representation for clients in need of assistance with housing, employment, education, and civil rights.



At the ACLU of Arizona, **Josh Bendor** worked to ensure that local officials respect the rights of migrants. In 2013, the ACLU obtained a judgment requiring the Maricopa County Sheriff's Office to refrain from targeting Latinos for traffic stops and from engaging in other activities on the basis of race and ethnicity. Josh worked to

implement that order. Josh also worked on a successful effort to obtain a preliminary injunction to prevent worksite raids that targeted immigrant workers. Josh, a member of the Yale Law School Class of 2013, graduated magna cum laude from Yale College, where he was also a Liman Summer Fellow. He clerked for the Honorable Paul A. Engelmayer of the U.S. District Court for the Southern District of New York, and after his Liman Fellowship, he will clerk for the Honorable Andrew Hurwitz of the U.S. Court of Appeals for the Ninth Circuit.



Burke Butler spent a second fellowship year at the Texas Defender Services (TDS), where she worked to improve living conditions for people on death row, all of whom are housed in solitary confinement. Burke spent her first year at the Texas Civil Rights Project on efforts to address the over-reliance on long-term isolation by Texas prison

authorities. In addition to investigating and documenting conditions for prisoners in isolation, Burke also forged collaborations with various groups, including a local corrections officers' union, to improve death row conditions for prisoners and staff alike. Burke, a 2011 graduate of Yale Law School, clerked

for the Honorable Harris Hartz of the U.S. Court of Appeals for the Tenth Circuit and for the Honorable Keith Ellison of the U.S. District Court for the Southern District of Texas.



Katie Chamblee received an extension to spend an additional year at the Southern Center for Human Rights (SCHR), working to improve the quality of counsel for poor people facing the death penalty in Alabama, Florida, and Georgia. Katie, who developed training and other resources for trial counsel during her first year as a Liman

Fellow, focused in her second year on pre-trial strategies for defendants. The effort aims to help at the front end, so as to enable defendants to avoid capital trials when possible, and to reduce the instances in which death penalty sentences are imposed. Katie graduated from Swarthmore College and Yale Law School. She clerked for the Honorable Myron H. Thompson on the U.S. District Court for the Middle District of Alabama. Following her fellowship, she will continue at SCHR as a staff attorney.



Emily Gerrick joined the Texas Fair Defense Project to oppose modern-day debtors' prisons in Texas. Through litigation and legislative advocacy, her focus is on reforming the practices of counties which incarcerate poor people who are unable to pay legal fees and fines. Emily is a member of the Yale Law School Class of 2014 and

graduated summa cum laude from UCLA with a B.A. in philosophy. In law school, she was a student director of the Detention and Human Rights Project and a member of the Capital Punishment Clinic. Emily is able to continue her project with the generous support of philanthropists Laura and John Arnold.



Caitlin Mitchell spent a second fellowship year working with Youth, Rights & Justice, in Portland, Oregon, where she represents incarcerated parents and their children in child welfare proceedings, aiming to help them continue their child-parent relationships. Caitlin also represented parent and child clients on appeal, and

assisted in appellate-level strategy regarding incarcerated parents and their rights. In addition, during her second year, Caitlin worked with the Oregon Department of Corrections to work toward developing child-friendly visiting policies and procedures. Caitlin graduated from Yale Law School in 2012 and from Yale College in 2006. Following law school, she clerked for the Honorable Martha Lee Walters of the Oregon Supreme Court. She will continue as a staff attorney at Youth, Rights & Justice after her fellowship concludes.



Dana Montalto will continue for a second fellowship year at the Veterans Legal Clinic of the Legal Services Center and the Home Base Program in Boston. Through individual representation and systemic advocacy, she will assist veterans who did not receive honorable discharges to gain access to treatment and benefits and work for

national changes in VA policies. Dana graduated magna cum laude from Wellesley College in 2009 and from Yale Law School in 2013. She clerked for the Honorable F. Dennis Saylor IV of the U.S. District Court for the District of Massachusetts.



Matthew Vogel has received an extension to continue his work with the Capital Division at Orleans Public Defenders in New Orleans, where he assists in the trial-level representation of people facing the death penalty. Matt will also develop research related to cases in which juveniles face sentences of life in prison without parole.

Matt, a 2013 graduate of Yale Law School, also graduated from Yale Divinity School. While he was in New Haven, Matt was active in the Worker and Immigrant Rights Advocacy Clinic. Following graduation, he clerked for the Honorable Keith P. Ellison of the U.S. District Court for the Southern District of Texas. Prior to law school, Matt, a 2001 graduate of Harvard College, worked with homeless people at New York City's Catholic Worker.



Jessica Vosburgh is working with the National Day Laborer Organizing Network (NDLON) to establish a workers' center in Birmingham, Alabama. The center, which opened its doors in November 2013, is dedicated to defending and expanding the rights of day laborers, domestic workers, and other low-wage and immigrant workers

in the region. Jessica, who graduated from Brown University in 2007, received her J.D. from Yale Law School in 2013, where she represented clients in deportation defense cases, wage claims, and civil rights litigation. Before law school, Jessica curated exhibits and events at a small café and arts venue in Manhattan. Jessica has received a Yale Law School Public Interest Fellowship to support her continued work with NDLON.



Adrien A. Weibgen received an extension to continue her work at the Community Development Project of the Urban Justice Center in New York, where she represents community groups around issues related to land use, development, and neighborhood change. In her first year, Adrien helped to negotiate a \$5.8M settlement agreement

on behalf of a cooperative of 45 immigrant-owned automotive businesses being displaced by a City-sponsored development initiative in Queens; advised a neighborhood coalition about a proposed rezoning in the Bronx; and worked to craft policy strategies to advance responsible, equitable development in communities across the City. In her second year, Adrien will continue to provide training, technical assistance, and legal support to community groups in neighborhoods facing rezoning so as to protect their rights and negotiate appropriate agreements with developers. Adrien graduated from Yale Law School in 2014.



Molly Weston has received an extension to spend a second year at A Better Balance in New York City, where she works to enforce that city's Earned Sick Time Act, providing workers with paid time off when they or their families are sick, injured, or receiving medical treatment. In the coming year, Molly will help A Better Balance launch

their new mobile clinic initiative; she will also support efforts to enact family-friendly legislation around the country. Molly, a member of the Yale Law School class of 2013, clerked for the Honorable Thomas L. Ambro of the U.S. Court of Appeals for the Third Circuit in Wilmington, Delaware. She graduated with High Honors in Political Science from Swarthmore College in 2010, where she was a Lang Opportunity Scholar.



Alyssa Work extended her fellowship at the Bronx Freedom Fund in New York. There, she assisted individuals facing misdemeanor criminal charges to post bail and avoid pretrial detention. Since beginning her fellowship in 2013, Alyssa's work enabled more than 250 clients to stay out of jail due to poverty. That buffer is important because

even short periods of time in detention can disrupt work and family and deprive people of the opportunity to litigate their cases. In 2015, Alyssa published a report on the impact of bail on misdemeanor defendants and participated in city and statewide efforts to create a more equitable bail system in New York. The Bronx Freedom Fund has attracted national attention as a model for reform. Alyssa is a member of the Yale Law School Class of 2013 and graduated in 2008 with High Honors in Political Science from Swarthmore College. Following her fellowship, she will clerk for the Honorable Victor Marrero of United States District Court for the Southern District of New York.

108 Liman Fellows: Welcoming the Incoming Liman Fellows, 2015–2016

The Liman Program awarded six new fellowships for 2015–2016, as well as five extensions.



Caitlin Bellis will be joining Public Counsel in Los Angeles, where she will divide her time between representing detained immigrants in deportation proceedings and working with a community coalition to establish a publicly funded program providing counsel to detained immigrants in the Los Angeles area. Caitlin is a 2014

graduate of Yale Law School and a 2010 graduate of Reed College, where she studied Spanish and Anthropology. At law school, Caitlin was a participant in the Worker and Immigrant Rights Advocacy Clinic. Caitlin clerked for the Honorable Richard A. Paez of the U.S. Court of Appeals for the Ninth Circuit.



Jamelia Morgan will spend her fellowship year working with the ACLU National Prison Project on efforts to limit solitary confinement in American prisons. Through litigation, administrative advocacy, and community organizing, she will build awareness of the particular challenges facing prisoners with physical disabilities

who are placed in isolation. Jamelia graduated from Stanford University in 2006 and from Yale Law School in 2013; she was a member of both the Criminal Defense Clinic and the Detention and Human Rights Clinic. She clerked for the Honorable Richard W. Roberts of the U.S. District Court for the District of Columbia.



Freya Pitts will join Disability Rights Advocates in Berkeley, California, to work on behalf of young people with mental health and learning disabilities confined in California's county juvenile halls. Her focus will be on expanding access to special education and related services and limiting the use of solitary confinement. Freya, a

member of the Yale Law School Class of 2013, clerked for the Honorable Judith W. Rogers of the U.S. Court of Appeals for the District of Columbia Circuit and for the Honorable Jon S. Tigar of the U.S. District Court for the Northern District of California. While in law school, she was a member of the Lowenstein International Human Rights Clinic, the Immigration Legal Services Clinic, and the Advocacy for Children and Youth Clinic. She graduated summa cum laude from Yale College in 2008.



Ryan Sakoda is spending his fellowship year at the Committee for Public Counsel Services (CPCS)—Massachusetts's public defender agency. At CPCS, he will help individuals who have been convicted or have pending charges to keep or to obtain public and subsidized housing. Ryan will both provide direct services to clients and

do empirical research on the interaction between the criminal justice system and public housing policies. Ryan graduated from Yale Law School in 2012 and is a Ph.D. candidate in economics at Harvard; his research focuses on the empirical analysis of crime and criminal justice policy. Prior to law school, Ryan was a Fulbright Scholar at the London School of Economics and a Peace Corps Volunteer in Ukraine. He graduated from the University of California, Berkeley, in 2003.



Ruth Swift is joining the Community Law Office, the public defender in Birmingham, Alabama, to advise colleagues and defendants on the immigration consequences of criminal proceedings for those defendants who are not citizens. Ruth will work with the Community Law Office to train defenders on the intersection

of immigration and criminal law and to ensure that Alabama's growing immigrant population is well served when brought into the criminal justice system. Ruth is a member of the Yale Law School class of 2015; she graduated from Hastings College in Nebraska in 2012. During law school, she was an active member of the Worker and Immigrant Rights Advocacy Clinic.



Mary Yanik will join the New Orleans Workers' Center for Racial Justice to provide legal support for an array of problems facing guest workers in the Gulf Coast energy sector. Her work will focus on administrative advocacy, civil litigation, and immigration defense to protect workers who face retaliation for reporting

workplace violations. Mary graduated from Yale Law School in 2014, where she participated in the Worker and Immigrant Rights Advocacy Clinic. Before law school, she was an organizer for United Students Against Sweatshops. She graduated from the University of Maryland in 2011. Mary clerked for Judge David F. Hamilton on the U.S. Court of Appeals for the Seventh Circuit.

Liman Summer Fellows Around the United States

The 2014 Liman Summer Fellows spent their summers working on issues ranging from immigration and criminal justice reform to educational adequacy, voting rights, and refugee protection. Below, the students from Barnard, Brown, Harvard, Princeton, Spelman, and Yale describe their summer experiences, and the insights they gained about lawyering, the justice system, and about themselves.

The fast-paced work environment was even more engaging than I had expected. In a single day I could assist my attorney in court, visit a client at the jail, pick up medical records from a hospital, figure out how to locate someone with nothing more than a nickname, and then drive into the field to interview this person. The workload fluctuated with the development and number of cases; however, on average my days were hectic and varied. But I would not have wanted it to be any different.

Harvard Summer Fellow, The Public Defender Service for The District of Columbia, Washington, DC

I truly enjoyed the opportunity I had to immerse myself in [the Homeless Rights Project] at the Legal Aid Society. My responsibilities included answering daily hotline inquiries about housing options in New York City, working on the publication of a newsletter for clients we represented, and providing direct legal services in front of PATH (where families must go to apply for shelter). It was a mixture of advocacy and direct legal services that involved interaction with clients.

Barnard Summer Fellow Legal Aid Society, New York, NY

I frequently accompanied clients to appointments or court. I really appreciated the one-on-one time I was able to spend with clients in these spaces. In court, I often sat with clients while we waited for their cases to be called. Frequently, in order-of-protection cases, the respondents would harass and threaten the clients I was with. I learned quickly how to handle challenging and potentially dangerous situations like these. Ultimately, the direct client interaction allowed me to build on my background in community organizing and mentoring while learning new skills related to public interest law.

Brown Summer Fellow Sanctuary for Families, New York, NY At [the Manhattan District Attorney's Office], I worked for prosecutors who took the weight of their jobs seriously, understanding that any decision required a careful balancing between many interests, the interests of not only the victim, but of the defendant and broader community as well. . . . My summer at the Manhattan DA's Office showed me an office committed not only to its basic mandate of representing the interests of the community and improving public safety, but also to an expanded mandate focused on community outreach and crime prevention.

Princeton Summer Fellow
The Manhattan District Attorney's
Office, New York, NY

I have heard the term "zealous defense" or "zealous representation" tossed around casually in circles of defense attorneys, but this summer was really the first time that I saw for myself how much of an impact such zealous legal defense can have on real people. It was really inspiring to see a public defender representing his average run-of-the-mill client as if he were making six figures a year representing the children of millionaires.

Princeton Summer Fellow
The Public Defender Service for
The District of Columbia,
Washington, DC

After helping the public defender build [the] argument and discussing this case numerous times with other public defenders in the office, I was confident that the client would be given conditional discharge. However, the client was ultimately sentenced to five years in the Illinois Department of Corrections, and I couldn't help but think to myself "is this justice?"—a 67-year-old homeless man sentenced to 5 years in prison for stealing a box of oatmeal cream pies that cost less than three dollars.

Spelman Summer Fellow Macon County Public Defender's Office, Decatur, IL On the surface, my summer experience may seem at odds with the mission of the Arthur Liman Public Interest Fellowship. Most students worked at think tanks, public defenders offices, or advocacy organizations. They presented their projects to political leaders and made investigative discoveries that impacted litigation. I, on the other hand, spent my summer exploring dilapidated buildings, studying archival maps and schemas, and interviewing community leaders. Yet the work of the New Orleans Redevelopment Authority has proven to impact justice and inequality as much as, if not more than, these other organizations. The built environment shapes opportunities and outcomes for generations to come.

Yale Summer Fellow New Orleans Redevelopment Authority, New Orleans, LA

My experience working at The Bronx Defenders was nothing short of life-changing; in ten short weeks, I grew both personally and intellectually as I worked with those impacted by the criminal justice system. The internship taught me about the workings of our criminal justice system, exposed me to new communities and cultures, and gave me the invaluable opportunity to help others in a way that truly mattered. Perhaps what I found most memorable about my internship, however, was the way in which it challenged me on a daily basis to re-evaluate my own assumptions, behaviors, and ethics.

Yale Summer Fellow
The Bronx Defenders, Bronx, NY

Since high school, I've been used to working in leadership roles in the organizations I join, so at first it was difficult for me to adjust to a support-based role. Now that I've been in that position, I find that I am not just more of a team player but a better leader as well, since I can see the project from a nuanced perspective.

Harvard Summer Fellow,
Transgender Legal Defense
and Education Fund, New York, NY

Working in my own neighborhood ironically broadened my horizons and gave me the opportunity to work with people that I have a passion for serving, my peers.

Brown Summer Fellow
Brownsville Community
Justice Center, Brooklyn, NY

I plan on graduating in 2017 and embarking on a career in international human rights law. This summer made me realize that parents would not risk their children's lives and sending them to another country if the situation in their own home countries were not as dire. As fellow citizens of the world, we need to make sure that countries are adequately presenting their citizens with access to their basic human rights. With that motivation I am excited about the meaningful work I can do in my lifetime.

Spelman Summer Fellow
The Department of Justice
Office of Immigration Litigation,
Washington, DC

[My supervisor] cautioned me against applying to law school solely with the goal of "changing the system from the inside." She explained that many people think this, and it is much more difficult than those people expect. In saying this, she had implied that she was one of those people, and so I asked her why she still practiced law, and she responded, "Just because the system is flawed doesn't mean that people don't still need legal representation." Hearing this response from someone who I greatly respect gave me a lot of clarity about how I might spend my life. Practicing law may not be the most radical choice. But while the people who are doing the most important work are still those who are organizing in their own communities, imagining different possibilities for the world, and simply surviving in the face of system that doesn't want them to, practicing law is still worth doing if people are asking for legal help.

> Barnard Summer Fellow Sexual Violence Law Center, Seattle, WA

Welcoming the 2015 Summer Class

Including this year's class, the Liman Program has supported the work of more than 340 summer fellows from six colleges and universities. We are pleased to announce that, beginning in the summer of 2016, the Liman Summer Fellows program will expand to include undergraduate students from Stanford University. In addition, the Liman Program has established a new summer fellowship with the Legal Action Center (LAC) in New York City. Arthur Liman co-founded LAC and served as its chair from 1973 until 1997. LAC's mission is to end discrimination against people with histories of addiction, HIV/AIDS, or criminal records.



Barnard Liman Summer Fellows

Melissa Louidor '17, Bronx Defenders, Bronx, NY Antonia Miller '16, The Legal Aid Society, New York, NY Sienna Walker '16, Vera Institute of Justice, New York, NY



Brown Liman Summer Fellows

Eliza Cohen '15, Center for Justice, Providence, RI Joshua Jackson '16, ACLU's National Prison Project, Washington, DC

Viet Nguyen '17, Clinton Global Initiative, New York, NY
Dante O'Connell '16, Public Defender Service for the District of
Columbia, Washington, DC



Harvard Liman Summer Fellows

Rebecca Brooks '17, The Atlantic Center for Capital Representation, Philadelphia, PA Shing-Shing Cao '18, Children's Rights, New York, NY Katherine Divasto '16, Greater Boston Legal Services, Boston, MA

Eunice Lee '17, Legal Aid of NorthWest Texas, Dallas, TX Sungmin Oh '17, Greater Boston Legal Services, Boston, MA Eva Shang '17, DC Public Defender Service, Washington, DC



Princeton Liman Summer Fellows

Marissa Brodney MPA '18, JD '18, U.S. Department of State Office of Global Criminal Justice, Washington, DC Laura Gault MPA '18, United States Department of Justice, Criminal Division, Washington, DC Cydney Kim '17, Legal Action Center, Seattle, WA Andrew Nelson '16, ACLU of Washington, Seattle, WA Safeeyah Quereshi '16, U.S. Commission on Civil Rights, Midwest Regional Office, Chicago, IL



Spelman Liman Summer Fellows

Alexis Agredo '15, Atlanta Mobile Market, Atlanta, GA Krystal Lunsford, '15, DeKalb District Attorney's Office, Decatur, GA

Camille May '16, Human Rights Project at Urban Justice, New York, NY



Yale Liman Summer Fellows

Haley Adams '16, Legal Action Center (LAC), New York, NY William "Tanner" Allread '16, Oklahoma Indian Legal Services (OILS), Oklahoma City, OK

Joshua Feinzig '16, Orleans Public Defenders, New Orleans, LA & Arch City Defenders, St Louis, MO

Micah Jones '16, Arch City Defenders, St. Louis, MO

Kimberly Mejia-Cuellar '16, ACLU Immigrants' Rights Project, San Francisco, CA

Sean Moore '17, Orleans Public Defenders (OPD)—Capital Unit, New Orleans, LA

Simone Seiver '17, The Marshall Project, New York, NY Connie Wang '16, National Center for Youth Law, Oakland, CA



The 2015 summer Fellows chat over breakfast



Left to right: Micah Jones, Yale Liman Summer Fellow 2015 and Haley Adams, Yale Liman Summer Fellow 2015



Linda Dunleavy, Associate Dean for Fellowships at Brown University



Louisa Lombard, Assistant Professor of Anthropology, Yale, was a Brown Liman Summer Fellow in 2003. She worked then for the Small Arms Survey doing research in the Central African Republic.

The Liman Public Interest Program

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Please visit our website at www.law.yale.edu/liman

Learn more about the Liman Fellows, see information about projects and upcoming events, and find details about the fellowship application process.

Public Interest Organizations and Fellowship Applicants

Organizations interested in hosting Liman Law Fellows and individuals wishing to apply for Liman Law Fellowships should contact Liman Director Johanna Kalb. For information about hosting a Liman Summer Fellow or applying for a Liman Summer Fellowship, please contact Johanna Kalb or one of the Liman Faculty Advisors at the coordinating schools listed on this page.

Yale Law School and Yale College

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Join Us in Supporting and Expanding the Liman Program

Your financial support of the Arthur Liman Public Interest Program means that more attorneys and students will be able to work on pressing legal issues in the public interest. We have many more applicants than we can currently fund. In these difficult economic times, help is greatly appreciated.

- \$50,000 supports a year-long public interest fellowship for a graduate of Yale Law School
- \$25,000 supports an extension of a fellowship beyond the initial year
- \$15,000 supports an annual conference
- \$10,000 creates a travel fund for Fellows to participate in conferences and research
- \$5,000 supports a publication relating to public interest law or the newsletter
- \$3,000 supports an internship for one summer fellow

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The 2014–2015 Liman Law Fellows class with Arthur Liman Professor Judith Resnik, Senior Liman Fellow in Residence Laura Fernandez, and Director of the Liman Public Interest Program Johanna Kalb