

# Liman Public Interest Workshop

# INCARCERATION

**REVISED Fall 2013 Syllabus**  
**Mondays, 6:10-8 pm, room 124**

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Student Conveners: Jessica Asrat, Emma Kaufman, Josh Levin

**All readings available at: <http://www.law.yale.edu/intellecualife/workshopsyllabus.htm>**

The practices of incarceration have changed over time. The numbers of people in jails and prisons rose substantially from the 1970s through the present, with some leveling off or modest declines in recent years in a few jurisdictions. As of 2011, some 2.2 million persons were in jails or prisons. Some 5.1 million people were under supervision through probation, parole, and supervised release. According to the Bureau of Justice Statistics, one in 107 American adults was behind bars, a rate roughly five times the worldwide average, and one in 50 was under some type of supervision.

Incarceration does not have the same impact on all who live in the United States; race, gender, age, nationality, and ethnicity interact to affect the likelihood that one will be detained or have family and community members in detention. People of color are disproportionately in prison. In 2009, African Americans and Latinos constituted more than 60% of imprisoned offenders. African American males were incarcerated in state and federal prisons at 6.4 times the rate of non-Hispanic white males, and Hispanic males at 2.4 times the rate of non-Hispanic whites. African American women are incarcerated at a rate 2.8 times that of non-Hispanic whites.

Participants in this Workshop will explore the history of detention and imprisonment in the United States; the rise of detention facilities owned and operated by the private sector; the use of specific forms of detention such as solitary confinement and specialized supermax facilities; and growing concerns about the costs — financial, dignitary, social, and political — of the system now in use. Our sessions will address the law of prisons, the market for prisons, and the perspectives of those who direct prisons, who work in them, and who are detained by them. We will consider the degree of oversight that courts, legislatures, and other actors have in shaping the parameters of permissible sanctions and regulating conditions of confinement. In addition to understanding U.S. law and practices, we will consider comparisons by drawing on

transnational materials. 2 units, credit/fail. H. Metcalf, M. Quattlebaum, J. Resnik, and A.T. Wall.

## Requirements and Readings

This Workshop is a two-unit, ungraded course. We meet weekly; preparation and attendance at these discussions is required for credit. If you need to miss a class, please be in touch with the professors in advance of the meeting. Students missing more than two sessions without permission will not receive credit.

The readings for the workshop, required to be read, include both those listed on the syllabus as well as student postings. Six times during the semester, students must post on “Inside Yale” a one-page reflection on readings — due NO LATER than 9 a.m. on the Monday mornings of the workshop — as well as send a set by email to the instructors. We will all use these readings to launch our weekly discussions. Each person seeking credit is responsible for posting at least six times in the semester, and a failure to do so on time results in receiving no credit. Readings are posted on the Liman Public Interest Program’s website: <http://www.law.yale.edu/intellecualife/workshopsyllabus.htm>. Those interested in pursuing additional research for supervised analytic or substantial writing requirements should consult individually with the instructors.

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## September 9 A Window into the Law and Experiences of Incarceration

Conveners: Jess Asrat, Emma Kaufman, Josh Levin, Hope Metcalf, Megan Quattlebaum, Judith Resnik, and A.T. Wall

This session introduces the semester’s themes: the challenges of incarceration for all involved; the day-to-day experience of incarceration; the theories of incarceration; and debates about the authority of penal systems. The readings focus on the array of relevant actors — prisoners, prison officials and staff, judges, lawyers, legislatures, and the public — to unpack some of the complex relationships among these actors, and doing so, to begin a discussion about the purpose and limits of incarceration.

As you read *Estelle* and *Plata*, consider the relationships among courts, prisoners, and administrators. What is the source of the U.S. Supreme Court’s authority in *Estelle*? What is the relationship of conditions of confinement to the forms of punishment of offenders? Does the U.S. Constitution embody theories of punishment? Of the constitutionality of conditions of confinement? What are the U.S. Supreme Court’s answers in *Estelle* and in *Plata* to these questions?

What are the structures that Sykes described? What aspects adhere in bureaucracies in general? Which aspects are specific to incarceration? What is law's relationship to these aspects of detention? The Johnson, Conover, Mooney, and James readings offer additional insights into the experiences of working and living within a prison. How do such accounts affect your views of the analysis, holdings, and potential effect of *Estelle* and *Plata*? Imagine that you are in charge of a prison facility and not only complying with these decisions, but also thinking about their implications. How would decisions like *Estelle* or *Plata* affect your management choices?

### **Legal Frameworks**

*Estelle v. Gamble*, 429 U.S. 97 (1976)

*Brown v. Plata*, 131 S. Ct. 1910 (2011)

### **Experiencing Incarceration**

Gresham M. Sykes, *THE SOCIETY OF CAPTIVES, A STUDY OF A MAXIMUM SECURITY PRISON* 63-83 (1958, republished in 1971)

Robert L. Johnson, *Revolving Door*, in *UNDOING TIME: AMERICAN PRISONERS IN THEIR OWN WORDS* 87-94 (Jeff Evans ed. 2001)

Ted Conover, *NEW JACK: GUARDING SING SING* 95-107, 121-26, 169-70 (2012)

Tom Mooney, *Prison Guards, Director Have Uneasy History*, *THE PROVIDENCE JOURNAL* (Feb. 13, 2007)

Erwin James, *The Norwegian Prison Where Inmates Are Treated Like People*, *THE GUARDIAN* (Feb. 24, 2013)

## **September 16      The Challenges of Administration and Management: Standard Setting**

Conveners: Jessica Asrat, Megan Quattlebaum, and A.T. Wall

The readings provide examples of standards — created by prison administrators, commissions, bar associations, and international organizations, among others — to govern the treatment of prisoners. The processes of standard creation are complex, and we invite reflection through the series of questions below.

What are the sources of authority for organizations to promulgate standards? The prompts for doing so? What is the effect of the contexts prompting standards on those made?

What are the processes for making standards? Who has input into standards? What are the sources of information and benchmarks or metrics for deciding on specific standards?

What makes standards legitimate? What makes standards effective? What are the measures to be used of standards' impact? Given the multiple standards excerpts, is there a hierarchy among them? On what metrics?

### **Attica's Impact**

New York State Special Commission on Attica, *ATTICA: THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA xi-xxi (1972)*

Arthur Liman, *LAWYER: A LIFE OF COUNSEL AND CONTROVERSY, 175-178, 190-194 (2002)*

### **A Search for Standards**

Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977)

Judith Resnik & Nancy Shaw, *Prisoners of Their Sex: Health Problems of Incarcerated Women*, in 2 *PRISONERS' RIGHTS SOURCEBOOK: THEORY, PRACTICE, AND LITIGATION* 319, 346-56 (ed. Ira Robbins, N.Y.: Clark Boardman, 1980)

American Correctional Association, *Inmate Sleeping Areas: Occupancy and Space Requirements*, *Standards for Adult Correctional Institutions* 36-37 (4th ed. 2003)

Camille & George Camp, *ASCA History*, in *Correctional Best Practices: Directors' Perspectives* 275-76 (2000)

Association of State Correctional Administrators (ASCA), *Performance Measures Committee: Mission Statement* (undated)

Rhode Island Department of Corrections Policy and Procedure, *Departmental Mission, Policy 1.02 DOC* (eff. 12/01/03)

ABA Standards for Criminal Justice: *History of its Involvement in Prison Standard Setting, and then Examples of Current Standard: Treatment of Prisoners* 63-69 (3d ed. 2011)

Richard W. Harding, *Regulating Prison Conditions: Some International Comparisons*, in *OXFORD HANDBOOK ON CORRECTIONS AND SENTENCING* 432-455 (Joan Petersilia & Kevin R. Reitz, eds., Oxford Press, 2012)

## September 23      Allocating and Contesting Authority

Conveners: Joshua Levin, Hope Metcalf, and Judith Resnik

We continue the discussion of the relationships among courts, the administration of prisons, and prisoners' rights. We do so by considering the work of William Wayne Justice, the federal judge involved in the Texas prison litigation (*Ruiz v. Estelle*); the development of congressional efforts to limit courts' authority (the Prison Litigation Reform Act — PLRA); and the contemporary conflict over the most recent prison conditions case to reach the Supreme Court (*Plata v. Brown*).

Our focus is on the various actors endowed with constitutional, legislative, administrative, political, and practical powers to oversee the administration of prisons. How did Judge Justice understand the role of judges in prison conditions cases? Is it different than in other kinds of cases? What were the concerns that animated the PLRA? How has the PLRA affected the balance of authority among judges, administrators, and legislatures? What are the metrics to assess the impact of litigation on conditions? The daily lives of inmates and administrators? The resources available to prisons? What has been the impact of the PLRA?

Hon. William Wayne Justice, *The Origins of Ruiz v. Estelle*, 43 STANFORD L. REV. 1, 1-12 (1990)

Statement of Senator Abraham, 143 CONG. REC. S14312 (daily ed. Sept. 26, 1995)

Prison Litigation Reform Act, 42 U.S.C. § 1997e *et seq.*

Margo Schlanger, *Civil Rights Injunctions Over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. REV. 550, 558-69, 589-622 (2006)

Heather Schoenfeld, *Mass Incarceration and the Paradox of Prison Conditions Litigation*, 44 LAW & SOCIETY REV. 731, 731-37 (2010)

Review the 2011 U.S. Supreme Court opinion in *Plata* from the first class and read:

*Plata v. Brown*, No. 3:01-cv-01351-TEH, Opinion and Order Requiring Defendants to Implement Amended Plan (June 20, 2013) (“Plata 3-Judge Court June 2013”)

Application by Governor Edmund G. Brown, Jr., to the Hon. Anthony M. Kennedy, for a Stay (July 10, 2013) pp. 1-6 (required), and 7-20 (optional)

Motion to File Amici Brief, by former Governors Wilson, Deukmejian, Davis, and Schwarzenegger (July 2013)

Denial of Application for a Stay, 2013 WL 3958281 (U.S. Sup. Ct. Aug. 2, 2013)

## **September 30 Racial Disparities and Discrimination: Theories and Sociologies of Incarceration**

Conveners: Emma Kaufman, Megan Quattlebaum, and A.T. Wall

This week's readings raise questions about the links between race and incarceration. We begin by reflecting on the long history of slavery, Reconstruction, and Jim Crow. Michelle Alexander offers Jim Crow as the lens through which to look at contemporary incarceration. Is that conceptualization illuminating? What is James Forman's critique? What are the reasons for underscoring the relationship between slavery and incarceration? For embracing this framing now or for being leery of it? What are the political implications for reform efforts of Jim Crow or other frames?

Turn from the history and reform of prisons to the practices of running prisons. Why did the California prison system think race was useful as a category in *Johnson v. California*? What are the variables that make race more or less relevant in the different jurisdictions running prisons?

### **Historical Legacies and Present Conditions**

*Ruffin v. Commonwealth*, 62 Va. (21 Gratt.) 790 (1871)

David Oshinsky, *WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW*  
JUSTICE 15-27 (1997)

MICHELE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF*  
COLORBLINDNESS 234-59 (2010)

James Forman, *Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 22-25, 34-48,  
53-63 (2012)

### **Race and Prison Management**

*Johnson v. California*, 543 U.S. 499 (2005)

ASCA Racial Disparity Committee materials, mission statement and self-  
assessment tool (adopted January 23, 2010)

Jonathan Jackson, Tom R. Tyler, Ben Bradford, Dominic Taylor, and Mike Shiner, *Legitimacy and Procedural Justice in Prisons*, PRISON SERVICE J. 3 (2010)

Emma Kaufman, *Finding Foreigners: Race and the Politics of Memory in British Prisons*, POPUL. SPACE PLACE, 18: 701, 701, 704-11 (2012)

## **October 7      Sociability, Organizations, and Communities: In and Out of Prisons**

Conveners: Joshua Levin, Megan Quattlebaum, and A.T. Wall

We consider how and why prison officials enable and limit inmates' contact with each other and with the outside world. Ought contact with visitors be understood as a constitutionally protected right, and, if so, what are the sources of that right? Given the studies documenting the utilities of visits for prison managers and for inmates both while incarcerated and after release, what explains the rules (detailed in the Liman Project overview of fifty states) that make visiting challenging in so many jurisdictions? Assume that you are a prison administrator, and you have read studies supporting two propositions: 1) inmates who have greater access to visitation have a greater chance of succeeding both in prison and when they leave and re-enter their communities and 2) denying inmates access to visitation is a disciplinary tool that provides alternatives to other constraints, such as administrative segregation. How do you balance these propositions when running a facility? Do the numbers of inmates, their gender or age, and the facility's level of security, and/or its proximity to urban centers alter your analysis?

These readings then turn from the issue of individuals and their visitors to aggregate activities. What tools do prison officials have to distinguish between inmate socializing/organizing that may be helpful to institutions and inmates and that which may present risks to the safety and security of inmates, staff, and the institutions? What forms of self-governance for inmates are or should be available? What forms of protest, such as hunger strikes, are possible and what responses appropriate?

### **Prison Visitation**

*Turner v. Safley*, 482 U.S. 78 (1987)

*Overton v. Bazzetta*, 539 U.S. 126 (2003)

Chesa Boudin, Trevor Stutz & Aaron Littman, *Prison Visitation Policies: A Fifty-State Survey* 1-2, 17-24 (Liman Project, Nov. 2012).

Grant Duwe & Valerie Clark, *Blessed be the Social Tie that Binds: The Effects of Prison Visitation on Offender Recidivism*, 39 CRIM. JUST. POL'Y REV. 1436 (2012) (skim the findings)

Judith Resnik, *Women Prisoners in the Northeast Get Shipped to Alabama-- and the Men Get Their Beds*, SLATE (July 25, 2013)

Letter from 11 U.S. Senators to the Honorable Charles E. Samuels Jr., Director, Federal Bureau of Prisons (Aug. 2, 2014)

Press Release, Murphy Applauds Bureau of Prisons Decision to Temporarily Suspend Transfer of Female Inmates from FCI Danbury (Aug. 14, 2013), available at [www.murphy.senate.gov/record.cfm?id=345546](http://www.murphy.senate.gov/record.cfm?id=345546)

Joe Palazzolo, *Agency Caps Inmates' Phone Rates*, WALL ST. J. (Aug. 10, 2013)

### **Inmate Organizations**

*Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119 (1977)

Bert Useem, *Disorganization and the New Mexico Prison Riot of 1980*, 50 AM. SOCIOLOGICAL REV. 677 (1985)

Judy Clark and Kathy Boudin, *Community of Women Organize Themselves to Cope with the AIDS Crisis: A Case Study from Bedford Hills Correctional Facility*, 1 COLUM. J. GENDER & L. 47 (1991)

George R. Vose, Jr. & Ashbel T. Wall II, *Inmate Management Audit, Administration of Correction, Commonwealth of Puerto Rico 1-23, 36-44* (1997)

Doreen McCallister, *Inmates Across California Join Hunger Strike over Conditions*, NPR (July 11, 2013)

Wilbert Rideau, *When Prisoners Protest*, N.Y. TIMES (July 16, 2013)

Plaintiffs' Second Amended Complaint, *Ruiz v. Brown*, No. 4:09-cv-05796 at 1, 8-19 (May 31, 2012)

Optional:

Muneer I. Ahmad, *Resisting Guantanamo: Rights at the Brink of Dehumanization*, 103 NORTHWESTERN L. REV. 1683, 1686-88, 1753-63 (2009)



## October 21 Mental Illness, Social Services, and Incarceration

Conveners: Jessica Asrat, Hope Metcalf, A.T. Wall, Howard Zonana, and Reena Kapoor

This class examines approaches taken to inmates with mental illness. People who are mentally ill and also commit crimes pose complicated questions for the state. Think back to the first session. According to *Estelle v. Gamble*, what obligations does the state have to provide mental health care to prisoners? When may the state's duty to protect (under *Estelle*) override a prisoner's/patient's liberty interest? Should that person be treated in the mental health or criminal justice systems? *Vitek v. Jones*, a case involving the transfer of a prisoner to a mental hospital, was decided in an era when many more beds in long-term mental health institutions existed than do in 2013. How might prison administrators respond, given the lack of alternative housing?

The readings also identify differences in approaches, from efforts to treat the mentally ill while incarcerated and efforts to manage mentally ill inmates, perceived as especially difficult to handle. One response has been to use segregation for mentally ill prisoners. Do mentally ill prisoners have greater protections against long-term segregation than other prisoners, and, if so, on what basis?

*Vitek* and *Estelle* deal with people who are incarcerated. The excerpt from Allegra McLeod addresses taking a different approach to defendants who are mentally ill. What concerns does McLeod raise about special "mental health courts," and what are her approaches?

The challenges faced by the mentally ill was one of the reasons that, in 1980, Congress enacted the Civil Rights of Institutionalized Persons Act ("CRIPA"), authorizing the Department of Justice (DOJ) to first exhaust administrative remedies and if unsuccessful, to file lawsuits on behalf of "institutionalized persons." In 1996, as part of PLRA, Congress imposed additional constraints on CRIPA and many more on litigation by prisoners themselves. What are the practices under CRIPA, and how do they compare with those imposed by PLRA? Consider the settlement in the district court in Massachusetts as one lens through which to consider the various options, from the perspectives of litigants, the courts, and the public.

### Treatment and Punishment

*Vitek v. Jones*, 445 U.S. 480 (1980)

William J. Rich, *The Path of Mentally Ill Offenders*, 36 FORDHAM URB. L.J. 89 (2009)

Bernard E. Harcourt, *From the Asylum to the Prison: Rethinking the Incarceration Revolution*, 84 TEXAS L. REV. 1752, 1763-65, 1776-84 (2006)

Allegra McLeod, *Decarceration Courts: Possibilities and Perils of a Shifting Criminal Law*, 100 GEO. L.J. 1587, 1611-20, 1639-42, 1673-74 (2012)

## **Segregation and Mental Health**

The Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 *et seq.*

Karen E. Holt, WHEN OFFICIALS CLASH: IMPLEMENTATION OF THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT 1-3, 13-19 (1998)

U.S. Dep't of Justice, Civil Rights Division, Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation (May 31, 2013)

*Disability Law Center v. Mass. Dep't Corrections*, 2012 WL 1237760 (D. Mass. Apr. 12, 2012)

## **October 28 Sex, Gender, Safety and Regulation**

Conveners: Emma Kaufman and Megan Quattlebaum

This session continues to consider the role that gender plays in prison. What duties does the U.S. Supreme Court in *Farmer v. Brennan* conclude are owed to prisoners? How are those standards to be implemented? Should sexual activity be permitted in prison?

The Prison Rape Elimination Act of 2003 ("PREA") has been hailed by many as landmark reform legislation; others consider it only a partial or even counterproductive response. What findings did Congress make in support of PREA? What obligations does the Act impose, upon whom, and to what end? When testifying about PREA, what concerns did Director A.T. Wall raise?

After enactment, the PREA Commission made findings and recommended action. What were the prevention and enforcement mechanisms envisioned by the Commission? Compare the Commission's proposals to the Department of Justice's (DOJ) final regulations. What are the differences, and what accounts for the variation?

Who should be held responsible for failures to prevent coerced sexual activity and how? What are the risks of over-enforcement? Of under-enforcement? Of variable enforcement? To what do Ristroph and O'Connell attribute the relatively high rate of sexual assault in U.S. prisons? How might one's theory of the causes for prison rape influence proposed solutions? What concerns do Ristroph and O'Donnell raise about PREA? How do Schuhmann and Wodahl understand PREA's genesis and its implications for other prison reforms? What are the promises of the "PREA approach" and its limits?

## **Constitutional Obligation to Protect**

*Farmer v. Brennan*, 511 U.S. 831 (1994)

## **Prison Rape Elimination Act**

Prison Rape Elimination Act of 2003, P.L. 108-79, 10 Stat. 972 (2003)

Ashbel T. Wall, II, Director, Statement on Prison Rape Reduction Act of 2003, Dep't of Corrections Rhode Island, H. Judiciary Comm. Subcomm. on Crime, Terrorism, and Homeland Security (Apr. 29, 2003)

Executive Summary, Report of the National Prison Rape Elimination Commission (2009)

U.S. Dep't of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape, 77 C.F.R. 37105 (Jun. 20, 2012)

Human Rights Watch, *New Prison Rape Standards Offer Landmark Protection* (May 17, 2012)

Bureau of Justice Statistics, U.S. Dep't of Justice, PREA Data Collection Activities (June 2013)

## **Post-PREA Perspectives**

Alice Ristroph, *Sexual Punishments*, 15 COLUM. J. OF GENDER & L. 139, 146-61, 174-84 (2006)

Ian O'Donnell, *Prison Rape in Context*, 44 BRIT J. OF CRIM. 241 (2005)

Robert A. Schuhmann & Eric J. Wodahl, *Prison Reform through Federal Legislative Intervention: The Case of the Prison Rape Elimination Act*, 22 CRIM. JUSTICE POL'Y REV. 111 (2011)

## **November 4 Constructing and Responding to Gendered Roles**

Conveners: Joshua Levin, Megan Quattlebaum, and Judith Resnik

We consider how gender roles are structured, reflected, exacerbated, and distorted in the prison context. What assumptions are made about women and men in housing, classification, staffing, and discipline? What levels of individualization are permitted such that inmates' understanding — possibly religiously or culturally influenced — of how they should be treated can be accommodated? What rules of personal privacy and sexual autonomy, and what recognition of vulnerability and risk, ought prisons take into account?

### **Women Correctional Officers**

*Dothard v. Rawlinson*, 433 U.S. 321 (1977)

Brenda V. Smith, *Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions with Men and Boys in Custody*, 59 U.C.L.A. L. Rev. 1690, 1693-99, 1705-15 (2012)

### **Women Inmates**

*Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993) (en banc)

Mary Bosworth, *Creating the Responsible Prisoner: Federal Admission and Orientation Packs*, PUNISHMENT & SOC'Y 67, 67-69, 76-82 (2007)

Piper Kerman, *ORANGE IS THE NEW BLACK* 52-71, 278-95 (2010) (skim)

The Liman Program, *Federal Prison Facilities: Locating Female and Male Federal Prisoners* (Oct. 23, 2013)

United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Resolution 2010/16 adopted on July 22, 2010

## **November 11 Safety, Segregation, and Isolation**

Conveners: Jessica Asrat, Hope Metcalf, Judith Resnik, and A.T. Wall

This session addresses the goals and experiences of administrative segregation – sometimes referred to as “solitary confinement” or “isolation.” The readings encompass a diverse set of legal, sociological, and journalistic frameworks through which to think about the usage and effects of segregation on all involved, as well as what process is due to inmates placed in it.

We begin with a review of the constitutional questions raised by the use of segregation. Consider the Court’s description of the “supermax” prison in Ohio – an environment of extreme sensory deprivation in which inmates may be placed indefinitely. What justifies those kinds of measures? Should courts intervene to limit such approaches? If so, how? Through substantive constraints on the criteria for placement? Procedural oversight on the process for placement? Setting standards for conditions while in isolation?

Think back to the obligations owed under *Farmer v. Brennan* as well as in PREA. How do those provisions relate to *Wilkinson*? Contrast the approach in the U.S. Supreme Court's analysis in *Wilkinson* with the legal analysis in the U.N. Special Rapporteur's report on solitary confinement. What sources of law does the Special Rapporteur rely upon? What is the nature of the legal constraints described?

Review the Liman survey of policies on administrative segregation in prison, the excerpts from the General Accountability Office's review of the practices of the Federal Bureau of Prisons, and the August 2013 best practices memorandum approved by the Association of State Corrections Administrators. Were you writing a policy on administrative segregation and drawing on materials read for this class, what rules would you create for placement, review, and exit from administrative segregation? How does the Dolovich reading on the segregation of LGBT prisoners inform your approach?

### **Constitutional and Administrative Limits**

*Wilkinson v. Austin*, 545 U.S. 209 (2005)

Judith Resnik, *Supermax and the Judiciary*, LIMAN NEWSLETTER (Fall 2010),  
adapted from Judith Resnik, *Detention, The War on Terror, and the Federal Courts*, 110 COLUM. L. REV. 579 (2010)

Interim report of the Special Rapporteur of the Human Rights Council on  
Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,  
Gen. Assemb. 66th Sess., A/66/268 2 11-44570 (Aug. 6, 2011)

*Isolation and Incarceration: A National Overview of Administrative Segregation  
in U.S. Prisons* 1-5 (Liman Program 2013)

### **Perspectives on Isolation and Segregation**

*Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety  
Consequences, Hearing Before the Subcomm. on the Constitution, Civil  
Rights, and Human Rights of the S. Comm. on the Judiciary* (June 19, 2012)  
—Statement of Charles E. Samuels, Director, Federal Bureau of Prisons  
—Statement of Anthony C. Graves

U.S. Government Accounting Office, Bureau of Prisons: Improvements Needed  
in Monitoring and Evaluation of Impact of Segregated Housing, GAO 13-13-  
429 (May 2013) – overview and pages 1-2, 5-8, 41-44; BOP response, 61-65

Association of State Correctional Administrators, *Restrictive Status Housing  
Policy Guidelines* (Aug. 9, 2013)

Anthony Papa, *Is Solitary Confinement Inhumane? Or Indispensable?* N.Y. TIMES  
(Aug. 9, 2011)

Susan Greene, *CO Prison Officials Acknowledge Chief's Murder Tied to Solitary Confinement Policies*, COLORADO INDEPENDENT (July 8, 2013)

Sharon Dolovich, *Strategic Segregation in the Modern Prison*, 48 AM. CRIM. L. REV. 1, 2-11 (**required**), 54-91 (**optional**) (2011)

Optional:

*Henderson v. Thomas*, Civ. No. 2:11cv224-MHT, 2012 WL 6681773 (M.D. Ala., Dec. 21, 2012)

## **November 18 Privatization and Incarceration**

Conveners: Jessica Asrat, Megan Quattlebaum, and Judith Resnik

According to a (highly critical) 2011 report by the American Civil Liberties Union, "[p]rivate prisons for adults were virtually non-existent [in the United States] until the early 1980s, but the number of prisoners in private prisons increased by approximately 1600% between 1990 and 2009. Today, for-profit companies are responsible for approximately 6% of state prisoners, 16% of federal prisoners, and, according to one report, nearly half of all immigrants detained by the federal government. In 2010, the two largest private prison companies alone received nearly \$3 billion dollars in revenue, and their top executives, according to one source, each received annual compensation packages worth well over \$3 million."

What are the reasons for privatizing? What are the legal grounds and political theories for arguing that privatization is a violation of individual rights and/or state obligations?

*Pischke v. Pitscher*, 178 F.3d 497 (7th Cir. 1999)

*Israel Private Prison Litigation*

—*Opinion of Jeffrey Jowell* (2006)

—*Academic Center of Law and Business v. Minister of Finance* (2009)

Decision N. 2004-10492 (2004) (Costa Rica)

Malcolm M. Feeley, *Entrepreneurs of Punishment: The Legacy of Privatization*, PUNISHMENT & SOC'Y 321, 321-23, 329-34, 336-38 (2002)

Sharon Dolovich, *State Punishment and Private Prisons*, 55 DUKE L.J. 439, 480-506, 523-34 (2005)

Judith Resnik, *Globalization(s), Privatization(s), Constitutional-ization, and Statization: Icons and Experiences of Sovereignty in the 21<sup>st</sup> Century*, 11 ICON 162, 162-73, 190-95 (2013)

GEO Shareholder Report 1-3, 6-11 (2011)

In the Public Interest, Criminal: How Lockup Quotas and “Low-Crime Taxes” Guarantee Profits for Private Prison Corporations (Sept. 2013).

## **December 2    When and Where Does Prison End?**

Conveners: Josh Levin, Megan Quattlebaum, A.T. Wall, Emily Wang, Camille and George Camp, and Fiona Doherty

This class explores the ways in which the carceral system extends its reach after an individual has finished serving a criminal sentence. The materials detail the formal regimes of control and surveillance that extend beyond the walls of the prison: namely, probation, parole, and “supervised release.” What are the aims of supervision and of re-entry regimes and what is the balance between continuing practices of subordination and enabling rehabilitation? When are conditions part of the punishment and when do they represent an effort to help? What roles do prison officials, probation officers, judges, lawyers, former detainees, and communities have in post-release regimes?

Thereafter, we turn to the medical, economic, and cultural effects of incarceration that burden former inmates during their process of re-entry. Given these materials, what needs to be reformed, why, and how?

Thomas P. Lebel and Shadd Maruna, *Life on the Outside: Transitioning from Prison to the Community*, THE OXFORD HANDBOOK OF SENTENCING AND CORRECTIONS 657-75 (Joan Petersilia & Kevin R. Reitz eds. 2012)

Fiona Doherty, *Indeterminate Sentencing Returns: The Invention of Supervised Release*, 88 NYU L. Rev. 958, 959-63, 995-1010, 1012-16 (2013)

Supervised Release Conditions (Sept. 2008)

Devah Pager & Bruce Western, *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*, Annals, AAPSS 196-96, 199-207 (May 2009)

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Optional:

Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 15-36* (Marc Mauer & Meda Chesney-Lind eds. 2002)

## **December 9 Reforming or Aspiring to End Incarceration as a Practice**

Conveners: Conveners: Jessica Asrat, Emma Kaufman, Josh Levin, Hope Metcalf, Megan Quattlebaum, Judith Resnik, and A.T. Wall

David J. Rothman, *THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC* *xiii - xx*, 79-108 (1971)

Michael C. Campbell and Heather Schoenfeld, *The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment*, *AMERICAN J. OF SOCIOLOGY* 1375 (March 2013)