

Liman Public Interest Workshop
Community, Confinement, Labor, and Rights
Fall 2010 Syllabus

Mondays, 6:10-8 pm, room 124

Hope Metcalf, Director, Liman Public Interest Program
Judith Resnik, Arthur Liman Professor of Law

Student Co-Conveners: Tanya Abrams, Chesa Boudin, Jeremy Kaplan-Lyman,
Helen O'Reilly, Matthew Smith, and Trevor Stutz

As the title indicates, this Workshop aims to explore the claims for incarceration and its impact on communities, human capital, safety, and justice. We will consider the roles of the private and public sectors, of state and federal courts, legislatures, and of transnational rights' claims in shaping, sustaining, or imposing pressures to change contemporary policies of incarceration. At times, we draw from materials about detention and incarceration in Connecticut, the state in which we sit and one distinguished by having unusually high incarcerate rates for African-American men, as well as a federal prison for women, and some efforts underway to reconsider sentencing, detention, and community justice. Students who attended the 2009-2010 Workshops—which focused on many issues within prison walls—are welcome to return.

Requirements and Readings

This Workshop is a two credit ungraded course. We meet weekly; preparation and attendance at these discussions is required for credit. In addition, at least six times during the semester, students must submit a one-page reflections on readings -- due by 9 a.m. on the Monday mornings of the workshop and circulated to the class. Our purpose is to encourage you to begin the conversations before class as you think about the relationship among readings. If you need to miss a class, please be in touch in advance with the professors in advance of the meeting. Students missing more than two sessions without permission will not receive credit.

In the event that you would prefer to receive one credit instead of two, please speak with the professors about the possibility of making special arrangements. Further, with permission, some students may do additional work (including research and clinical opportunities) for additional credit. The amount and kind of credit (SAW, etc.) depends on the project approved. Auditing is possible, and visitors are also welcome, again with permission from the teachers. Below is an outline of the sessions and a list of readings, to be supplemented or varied in light of our discussions and your suggestions.

Readings and participation:

Two texts are to be purchased, and other readings will be available on the Liman Public Interest Workshop's "Yale Inside" site.¹ The two texts to be purchased are:

On Mass Incarceration, 139 Daedalus (Summer 2010)

Nicola Lacey, *THE PRISONERS' DILEMMA: POLITICAL ECONOMY AND PUNISHMENT IN CONTEMPORARY DEMOCRACIES* (2008) (paperback)

Below we outline the first few weeks of classes and questions as well as outline the topics of the semester.

September 13: *The State of Incarceration* (co-convenor Chesa Boudin)

In the 2010-2011 term, the Supreme Court will again take up the topic of the relationship between courts and prisons – in the context of the massive litigation about conditions in California's prisons. As you read the following introductory materials, what (if anything) in these descriptions – from the 1970s and from now -- surprise you? What are the reasons for insisting on or constraining judicial involvement in sentencing laws and in conditions of incarceration? What institutions ought to set boundaries on the length of incarceration and its entailments? What can be gleaned from these readings about why and how people are punished?

Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, codified in part at 18 U.S.C. § 3626

Arthur Liman, et al., *THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA xi-xxi, 6-20* (1972)

Coleman v. Schwarzenegger, No. Civ. S-90-0520 LKK JFM P **49-60; 99-109** (E.D. Cal., N.D. Cal., Aug. 4, 2009) (three-judge court), available at <http://www.caed.uscourts.gov/caed/Documents/90cv520o10804.pdf>

Schwarzenegger v. Plata, No. 09-1233, available at <http://www.supremecourt.gov/qp/09-01233qp.pdf> (questions presented)

Incarceration in Connecticut: A Snapshot (by Matthew Vogel, YLS '12)

¹. Enrolled students should be able to access these materials; if problems arise, please contact Hope Metcalf, hope.metcalf@yale.edu or JR Ramirez, raul.ramirez@yale.edu or (203) 432-9165.

September 20: Shifts in Incarceration: Mass or “Hyper” Incarceration Patterns
(co-convenor Matthew Smith)

As the readings detail, U.S. prison populations have grown dramatically (as measured per capita) over the last half century. Some commentators talk about “mass incarceration” and others to argue that term mis-describes the problems. As you review the materials, consider the relationships among crime rates, social change, and punitive policies, as well as about how to think about whether the United States an outlier among contemporary democracies, or a trendsetter.

Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors That Explain the Decline and Six That Do Not*, 18 J. Economic Perspectives **163-190** (2004), available at <http://www.jstor.org/stable/3216880?origin=JSTOR-pdf&>

Loïc Wacquant, *Class, Race & Hyperincarceration in Revanchist America*, 139 *Daedalus* **74-90** (Summer, 2010), available at http://www.mitpressjournals.org/doi/abs/10.1162/DAED_a_00024

Robert Weisberg and Joan Petersilia, *The Dangers of Pyrrhic Victories Against Mass Incarceration*, 139 *Daedalus* **124-132** (Summer 2010), available at http://www.mitpressjournals.org/doi/abs/10.1162/DAED_a_00028

Nicola Lacey, “‘Penal populism’ in comparative perspective,” in *THE PRISONERS’ DILEMMA* **3-54** (2008)

September 27: The Demography of Policing and of Incarceration: “Smart Policing” and the Geography of Arrests and Detention (co-convenor Tanya Abrams)

What are your responses to these maps of policing and detention? What would make policies (of policing or other law enforcement efforts) “smart”? What are the politics of choices of words such as these? What makes a law enforcement strategy “community” based? We will consider these questions in light of recent local debates surrounding a proposed curfew for youths in New Haven as well as complaints about how the police enforce bike traffic rules.

Bruce Western and Becky Pettit, *Incarceration & Social Inequality*, 139 *Daedalus* 8-19 (Summer 2010), available at http://www.mitpressjournals.org/doi/abs/10.1162/DAED_a_00019

Robert J. Sampson & Charles Loeffler, *Punishment’s Place: The Local Concentration of Mass Incarceration*, 139 *Daedalus* 20-31 (Summer 2010), available at http://www.mitpressjournals.org/doi/abs/10.1162/DAED_a_00020

Phillip Heymann, *The New Policing*, 28 *FORDHAM URB. L. J.* 407, 422-441 (2003)

Board of Alderman, Proposal for Youth Protection Ordinance (Aug. 29, 2006)

Melissa Bailey, Youth Curfew Proposed, New Haven Independent (Aug. 30, 2006), http://newhavenindependent.org/index.php/archives/entry/youth_curfew_proposed/

Melissa Tuhus, Youth Curfew Proves Not So Simple, New Haven Independent (Nov. 1, 2006) http://www.newhavenindependent.org/archives/2006/11/youth_curfew_me.php

Editorial, New Haven's Problems and Promise, New York Times (Dec. 17, 2006) <http://www.nytimes.com/2006/12/17/opinion/CTcurfew.html>

Paul Bass, Bike Stop Turns Serious, New Haven Independent (Oct. 12, 2009) http://www.newhavenindependent.org/archives/2009/10/bike_stops_turn.php

Alan Appel, Biking While Black, New Haven Independent (May 10, 2010) http://newhavenindependent.org/index.php/archives/entry/biking_while_black

October 4 Probation and Proportionality (co-convenors Jeremy Kaplan-Lyman and Matthew Smith)

There are now over five million Americans on probation or parole, more than two times as many than are in prison. How do probation and parole practices demand us to rethink our conception of the carceral state? Are probation and parole effective solutions to the problems of over/mass/hyper/unnecessary-incarceration? Is proportionality a useful framework for thinking through problems of sentencing and probation in particular?

Maurice Vanstone, *The International Origins and Initial Development of Probation*, 48 BRIT. J. CRIMINOLOGY 735 (2008), available at <http://bjc.oxfordjournals.org/content/48/6/735>. **Read:** intro and 744-752.

Conn. Gen. Stat. §§ 53a-29 through 32 (setting out terms for probation and revocation); Conn. Gen. Stat. § 54-127a (parole revocation).

THE PEW CENTER ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS (2009), available at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

Celia Perry, *Probation Profiteers*, MOTHER JONES, Jul./Aug. 2008, available at <http://motherjones.com/politics/2008/07/probation-profiteers>.

Sandy Hodson, *Attorneys Challenge Legality of Private Probation*, THE AUGUSTA CHRONICLE, Jan. 26, 2010, available at http://chronicle.augusta.com/stories/2010/01/26/met_564699.shtml.

Private Probation Kicked Out of Sumter County, <http://organizethesouth.blogspot.com/2010/03/private-probation-kicked-out-of-sumter.html> (Mar. 22, 2010, 19:40 EST).

State v. Oakley, 2001 WI 103 (2001), available at <http://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=17587>.

State v. Faraday, 268 Conn. 174 (2004), available at <http://www.jud.ct.gov/external/supapp/Cases/ARocr/CR268/268cr41.pdf>.

Alice Ristroph, *Proportionality As A Principle of Limited Government*, 55 DUKE L. J. 263 (2005), available at <http://find.galegroup.com/gtx/infomark.do?&contentSet=IAC-Documents&type=retrieve&tabID=T002&prodId=AONE&docId=A145682329&source=gale&srprod=AONE&userGroupName=29002&version=1.0>. **Read only:** 297-314.

October 11 **Classification of People in Prison: How, Why and with What Consequence?** (co-convenors Burke Butler, Elizabeth Compa, and Claire Pavlovic)

During the past decade, prison systems have experienced increased pressure to improve their approaches to classifying prisoners according to custody, work, and programming needs. Litigation and overcrowding have caused classification systems to be viewed as a principle management tool for allocating scarce prison resources efficiently and minimizing the potential for violence or escape. These systems are expected to provide greater accountability and to help forecast future prison bedspace, staffing requirements, and prisoner program needs.

What historical trends in crime and imprisonment have sparked the rise of new classification systems? Who do modern classification systems manage and why? How successfully do modern classification systems manage offenders? Are there alternatives to modern classification systems, and if so, should correctional departments pursue them? How should classification systems manage women offenders, who have unique characteristics and needs? How have modern trends in classification inspired the rise of the supermax prison? Are supermax prisons worth their cost, both in terms of the expense of their construction and their impact on offenders?

Sandin v. Conner, 515 U.S. 472 (1995) (Excerpted).

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

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

James Austin and Kenneth McGinnis, *Classification of High-Risk and Special Management Prisoners: A National Assessment of Current Practices* (National Institute of Corrections, June 2004), available at nicic.gov/pubs/2004/019468.pdf (Executive Summary).

George Judson, *A Prison Blurs Colors of Gangs to Curb Violence Among Rivals*, THE NEW YORK TIMES, Jan. 29, 1996, available at <http://www.nytimes.com/1996/01/29/us/a-prison-blurs-colors-of-gangs-to-curb-violence-among-rivals.html?pagewanted=1>.

INSERT: One-Page Chart from Connecticut DOC Manual on Privilege Consequences of Classification.

INSERT: One-Page Summary of Connecticut DOC Manual on Classification.

Patricia L. Hardyman and Patricia Van Voorhis, *Developing Gender-Specific Classification Systems for Women Offenders* (National Institute of Corrections, February 2004), available at <http://nicic.gov/Library/018931> (Executive Summary).

Leena Kurki and Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 Crime & Just. 385 (2001), available at <http://www.jstor.org/stable/1147678>.

October 18 **Fall Break NO CLASS**

October 25 **Who Gets Out, When and How?: Early Release, Half-way Houses, Furloughs, and Reentry** (co-convenors Nicole Jeong, Helen O'Reilly, and Gabriela Rivera)

In this class, we will consider the law and policy surrounding the release of people from prison. The last decade has seen increasing attention paid to “re-entry” of people from prisons to communities, a trend that seems likely to continue given the pressure to reduce prison populations due to budget shortfalls. The number of inmates released from state prison grew for the seventh year in a row in 2008 and reached an all-time high of 683,106.² In addition, data suggest that 67% of returning offenders will be rearrested, and over 50% will be re-incarcerated within three years of their release from prison.³

² William J. Sabol, Heather C. West and Matthew Cooper, “Prisoners in 2008,” U.S. Department of Justice, Bureau of Justice Statistics (2009), 16, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>.

³ Langan, P.A. & D.J. Levin. *Recidivism of Prisoners Released in 1994*. NCJ 193427. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 2002

Consider the obstacles facing people upon leaving prison. What are they, and what role might the state play in either *creating* or *correcting* them? What is the responsibility (legal, practical, or otherwise) of the state to a person once it has released that person from custody? (Here, recall our discussion about probation and parole as well as Eighth Amendment jurisprudence regarding the minimum standards of treatment owed to people in state custody.) What might be “given” to the individual and, in return, what might be demanded? What role might surveillance or other technology play? At what point is the appropriate response for a violation of the terms of release?

How does the subject of “prisoner reentry” fit into the conversation? What does “prisoner reentry” imply, and what policies are typically encompassed by that phrase? Is “reentry” a new concept? A successful rebranding of prior release policies? What political weight does it carry and to whom is it meant to appeal?

Much of the legal and sociological literature on reentry is evidence-driven. What problems are these programs trying to solve? According to the readings, which programs appear to work? By what measure is success determined? Which approaches appear to be worth duplicating? What are apparent shortcomings? What data is informing and driving policy and program choices? What other data is needed? What do you think of the emphasis on empirical approaches?

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The subject of “prisoner reentry” has become the subject for federal legislation, as well. The Second Chance Act authorized up to \$330 million in federal money to create grants for states to implement prisoner reentry programs. In fiscal year 2009, \$25 million was appropriated for Second Chance Act programs. In 2010, that figure was \$114 million. What does the SCA address and what does it omit? Who should pay for these programs?

Frontline, The Released,
<http://www.pbs.org/wgbh/pages/frontline/released/stories/anthony.html>

Please view the selected 30 minute segment below:

1 – 18:30 (Chapter 1 – 2)

33:31 – 43:30 (Chapter 4)

Brett Garland, et al., *Prisoner Reentry in a Small Metropolitan Community: Obstacles and Policy Recommendations*, CRIM. JUST. POL'Y REV (Apr. 14, 2010)

Jessica S. Henry, The Second Chance Act of 2007, CRIM. L. BULL., Summer 2009.

Pamela K. Lattimore, et al., Prisoner Reentry in the First Decade of the Twenty-first Century, VICTIMS & OFFENDERS, 5: 3, 253 - 267 (2010)

R. Seiter & R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What is Promising*, 49 CRIME & DELINQ. 360 (2003)

Smith & Milan, Survey of the Home Furlough Policies of the American Correctional Agencies, CRIMINOLOGY (May 1973)

Chris Suellentrop, *The Right Has a Jailhouse Conversion*, N.Y. Times, Dec. 24, 2006, § 6, at 1

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

November 1 Communities and Incarceration (co-convenor Chesa Boudin)

Guest: Kathy Boudin, Director of the Criminal Justice Initiative at Columbia University

Questions to consider as you read: How does incarceration intersect with communities, both where people are coming FROM and going TO? What do we know about how the law either helps to create or hinder community- and relationship-building between prisoners and others? Which relationships are benefited or hindered? Who visits prisons? What segments of society have a presence there? How transparent are prisons? How easily accessible? Should people in prison be encouraged/permitted to continue community membership? Or is that part of punishment? What does it mean to be a parent in prison? How does the law intersect with that relationship?

Kathy Boudin, & Judith Clark, *A community of women organize themselves to cope with the AIDS crisis: A case study from Bedford Hill correctional facility*. 1 COLUM. J. GENDER & L. 66 (1991).

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

Fed. Bureau of Prisons, Program Statement 5267.08 (2006) (Visitation regulations), C.F.R. §540.40

CT Dept. of Corrections Admin Directive No. 10.6, *Inmate Visits*, Aug., 15, 2009

Bazetta v. McGinnis, 286 F.3d 311 (6th Cir. 2002).

Overton v. Bazzetta, 539 U.S. 126, **129-37** (2003).

Emily K. Nicholson, Comment, *Racing Against the ASFA Clock: How Incarcerated Parents Lose More than Freedom*, 45 DUQ. L. REV. 83 (2006).

Candace Kruttschnitt, *The Paradox of Women's Imprisonment*, 139 DAEDALUS **32-42** (Summer 2010).

Connecticut's Prisons: A Statistical Snapshot
Building Bridges: From Conviction to Employment, One Year Later, Council of State Governments, Criminal Justice Programs, Feb. 18, 2004

Todd Clear, *Death by a Thousand Cuts, Studies of the Impact of Incarceration in Imprisoning Communities* in IMPRISONING COMMUNITIES **93-120** (2007).

Walton v. New York State Dept. of Correctional Services, 13 N.Y.3d 475, (2009)
[Excerpt]

November 8 The Market in and of Prisons (co-convenor Trevor Stutz)

Guest: A. T. Wall, Director of the Rhode Island Department of Corrections

What forces shape the political economy of prisons? How does Lacey explain the different rates of incarceration in the U.S. and continental Europe? How has the recent fiscal crisis affected state policies regarding incarceration? Does the financial crisis explain California, the *Plata* decision, and the order to reduce the prison population? Does the financial crisis explain Rhode Island's adoption of new policies?

What roles are played by employment opportunities, unemployment, and labor unions in prison policies? What impact do correction officers unions and professional associations have on sentencing and prison policy? Do their stances differ from the roles played by other "special interest" groups in policymaking? Are you surprised at the California Correctional Peace Officers Association's (the prison guard union) response to *Plata*, in light of the Petersilia article? How did the Rhode Island Brotherhood of Correctional Officers gain so much power? How do prison management (under the executive branch) and the legislative branch relate to the prison guards union - and to one another? Who ultimately controls the size of the prison population? Would private prisons play a different political economy role because of their profit motives?

How do you view the privatization of prisons and the delegation of the state's "monopoly" on power? What is Volokh's argument about the political economy of privatizing prisons? Why did Israel find privatizing its prisons to be unconstitutional? Is this finding inconsistent with U.S. values, the Constitution, or history?

Jonathan Simon, Clearing the "Troubled Assets" of America's Punishment Bubble, 139 DAEDALUS 91-101 (Summer 2010)

Marie Gottschalk, Cell blocks & red ink: Mass incarceration, the great recession & penal reform, 139 DAEDALUS 62-73 (Summer, 2010)

Ben Carrasco & Joan Petersilia, Assessing the CCPOA's political influence and its impact on efforts to reform the California corrections system, California Sentencing & Corrections Policy Series Stanford Criminal Justice Center Working Papers (2006).

Brief by Intervenor California Correctional Peace Officers Association in *Schwarzenegger, et al., v. Plata, et al.* (09-1233), available at <http://www.scotusblog.com/wp-content/uploads/2010/06/09-1233/Motion-to-dismiss-or-affirm-by-intervenor-California-Correctional-Peace-Officers-Associationl.pdf>

Tom Mooney, Bargaining Power: After 25 Years, the ACI Brotherhood Thrives, Dec. 17, 1995, Providence Journal.

Leo Carroll, Lawful Order: A Case Study of Correctional Crisis and Reform (1999) pp269-75.

ACI Guards End Strike, Jul.27, 2000, Providence Journal.

Tom Mooney, Prison Guards, Director Have Uneasy History, Feb.23, 2007, Providence Journal.

The Council of State Governments: Justice Center, Increasing Public Safety and Generating Savings: Options for Rhode Island Policymakers (Apr. 3, 2007) available at <http://justicereinvestment.org/states/rhodeisland/pubmaps-ti>

John Hill, Fewer Behind Bars in R.L: 'Good Behavior' Incentive Works, Dec. 12, 2009, Providence Journal.

Sharon Dolovich, State Punishment and Private Prisons, 55 DUKE L.J. 437 (2008) *437-62

Alexander Volokh, Privatization and the Law and Economics of Political Advocacy, 60 Stan. L. Rev. 1197 (2008). Part II. (*1215-32)

Academic Center of Law and Business v. Minister of Finance, Israeli High Court of Justice 2605105 (2009). pp.27-29 (overview), 55-61 (human dignity & liberty overview), pp.63-66, (liberty) 73-78 (human dignity), 157-62 (comparative analysis), 181-89 (dissent)

November 15 **Children, Schools, and Prisons** (co-convenors Jeremy Kaplan-Lyman and Helen O'Reilly)

Guests: Alexandra Dufresne, Connecticut Voices for Children
 Laura McCarger, Co-Founder of Youth Rights Media

Education is often seen as a solution to high crime and hyper-incarceration (not to mention racism, class, gender, etc.). As you read this week, consider what role schools play in American society. Do educational institutions - as presently situated - possess the potential to alleviate the American prison crisis? To what extent are American approaches to education consistent or at odds with American approaches to punishment? What is the role of the law in public schools? What rules, laws, and regulations affect the day to day life of teachers, students, and staff? What are the limits and boundaries of a teacher's decision to exclude a student from a classroom? For how long and who decides? What is an alternative school? When, if ever, should a child lose a right to be in any school? What labels do we use to describe students – i.e. bullies; at-risk youth; special needs children - and how do labels create or inform the debate on school discipline? What is the school-to-prison pipeline and what does this term try to describe?

Ultimately, while we may be concerned with the punitive turn in schools and the juvenile justice system, solutions are never simple. As you think about potential school and juvenile justice reforms, consider how we should balance the rights and needs of “problem” children against the interests of other children and teachers that share the same classroom and schools. What rights and responsibilities do parents have in relation to the school? What kinds of institutions should deal with children who commit infractions and crimes? Who decides when the something should be dealt with in school or by the justice system? Once a child is institutionalized, what role do the state and federal governments have in running and regulating youth correctional facilities?

Goss v. Lopez, 419 U.S. 565 (1975)

Kay S. Hymowitz, “You Can’t Suspend Me,” The New Democrat (Sep. 1, 1999).

JONATHAN SIMON, “Safe Schools: Reforming Education Through Crime,” in GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR **207-231** (Oxford University Press 2007).

AMERICAN CIVIL LIBERTIES UNION, *HARD LESSONS: SCHOOL RESOURCE OFFICER PROGRAMS AND SCHOOL-BASED ARRESTS IN THREE CONNECTICUT TOWNS* (2008) **Executive Summary**

AMERICAN CIVIL LIBERTIES UNION, *MISSING THE MARK: ALTERNATIVE SCHOOLS IN THE STATE OF MISSISSIPPI* (2009) **Executive Summary**

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, “The School to Prison Pipeline: A National Problem” (**Graphic**).

Alexandra Dufresne, J.D., Annemarie Hillman, Cari Carson, & Tamara Kramer, *Teaching Discipline: A Toolkit for Educators on Positive Alternatives to Out-of-School Suspensions* (2010), **Excerpt: Executive Summary and Appendix A**

Elizabeth Benton, *Crackdown at Wilbur Cross Nets 100 Suspensions*, THE NEW HAVEN REGISTER, Jan. 11, 2010.

Stephanie Chen, *Girl's Arrest for Doodling Raises Concerns About Zero Tolerance*, CNN, Feb. 18, 2010.

Robert A. Frahm, *Committee Rejects More Delay of In-School Suspension Requirement*, THE CT MIRROR, Apr. 15, 2010.

Kay S. Hymowitz, “Zero Tolerance’ Is Schools’ First Line of Defense,” NEWSDAY, (Apr. 18, 2001).

Texas American Federation of Teachers (AFT), *A Primer on the Texas Safe Schools Law* (July 2009), available at <http://tx.aft.org/index.cfm?action=article&articleID=b0c31a19-1526-4769-8657-45cc5ec5efa6>

Department of Education, *Letter on Bullying by Russlynn Ali, Assistant Secretary for Civil Rights*, (Oct. 26 2010), available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html

Department of Justice, *Letter to Governor Patterson of New York, Re: Investigation of the Lansing Residential Center, Louis Gossett, Jr. Residential Center, Tryon Residential Center, and Tryon Girls Center* (Aug. 14, 2009)

Short Videos:

The Transformation of West Philadelphia High School: A Story of Hope, International Institute for Restorative Practices (2009) <http://www.iirp.org/westphilahigh/>

Book 'Em: undereducated, overincarcerated, Youth Rights Media http://www.youtube.com/watch?v=X2Kjq_qtRTE

November 22 **Thanksgiving Week**
NO CLASS

November 29 **The Roles for Local and State Governments** (co-convenors Tanya Abrams and Trevor Stutz)

Guest: A. T. Wall, Director of the Rhode Island Department of Corrections

On the local level, some commentators have called for an alternative conception of community-based justice. What is it, and how are we to assess it? What are its goals? Do they include a reduction in prison population, access to justice, procedural justice?

What are “problem-solving courts,” and what role do they play in state- and local-level criminal justice reforms? What makes these courts “community-based”? What does it mean for a judge to play the role of adjudicator and clinician/psychiatrist? Are these roles compatible? What are the parallels to the role of courts in schools? Are you worried that these courts serve to expand the criminal justice system?

What are the critiques of these courts’ legitimacy? Do grass-roots-level initiatives, such as youth courts run by NGOs, stand a better chance of achieving certain goals than “community courts”?

How do the examples of Red Hook and Hartford compare to one another? Can you imagine the community court model extending to other contexts, such as schools, parole boards, or prisons?

Judith Resnik, *New Federalism(s): Translocal Organizations of Government Actors (TOGAs) Reshaping Boundaries, Policies, and Laws, Why the Local Matters: Federalism, Localism, and Public Interest Advocacy* (2008)

Pamela M. Casey & David B. Rottman, *Problem-Solving Courts: Models and Trends*, NATIONAL CENTER FOR STATE COURTS (2003). *1-11

Jeffrey Fagan and Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L. REV. 897 (2003)

Tamar M. Meekins, “*Specialized Justice*”: *The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm*, 40 SUFFOLK U. L. REV. 1 (2006). *1-27, 33-37

Robert Weidner, *Hartford Community Court: Origins, Expectations, and Implementation*, Center for Court Innovations (1999) available at www.courtinnovation.org/uploads/documents/HARTF~Z1.PDF.

Quintin Johnstone, *The Hartford Community Court: An Experiment That Has Succeeded*, 34 CONN. L. REV. 123 (2001). *130-56

Interview with Judge Raymond Norko, Center for Court Innovation (May 2009) available at

<http://www.communityjustice.org/index.cfm?fuseaction=Document.viewDocument&documentID=960&documentTopicID=31&documentTypeID=8>

Press Advisory: U.S. Department of Justice Selects Community Court in Hartford as Model For Other Community Courts Nationwide, State of Connecticut Judicial Branch (Mar. 20, 2009)

Timothy Casey, *When Good Intentions are Not Enough: Problem-Solving Courts and the Impending Crisis of Legitimacy*, 57 SMU L. REV. 1459 (Fall 2004). *1489-1504

Sarah S. Pearson & Sonia Jurich, *Youth Court: A Community Solution for Embracing At-Risk Youth: A National Update*, American Youth Policy Forum (2005). *5-22

December 6 MENTAL HEALTH AND SYSTEMIC ISSUES IN INCARCERATION

This class aims both to explore some of the issues surrounding mental health in prisons and to draw on previous themes from the semester. Our resident mental health experts, Howard Zonana and Reena Kapoor, will assist in a conversation about both the intractability of individual cases and broader systemic problems with mental health and confinement.

How does mental health interact with the purposes and goals of incarceration? Do the deterrent and rehabilitative goals of punishment apply with equal force to the mentally ill? What about incapacitation and retribution? Does it depend on the specific mental illness? What are the current practices in prisons for people with mental health problems? Is the provision (or lack of provision) of mental health care a unique problem or is it symptomatic of broader problems with health care in the prisons? How does hyper-incarceration fit into this picture?

The readings below are much fewer and shorter than usual. In the interest of having a conversation across the issues we covered this semester, participants should also reflect on previous readings (a copy of the entire semester's syllabus is included in the email - please look especially at articles in *Daedalus*). What reading did you find most resonant as either a description of or prescription for current practices of incarceration? Did your opinions of any readings change over the course of the semester? What reforms would you implement given relatively feasible changes in the political firmament and resource allocation?

Conveners: Reena Kapoor, Professor of Psychiatry
Hope Metcalf, Director, Liman Public Interest Program
Judith Resnik, Arthur Liman Professor of Law
Matthew Smith, Student Co-Convenor

Howard Zonana, Professor of Psychiatry

Readings: Plata v. Schwarzenegger, *Amicus Brief of the American Public Health Association*

Plata v. Schwarzenegger, *Oral Arguments*, pp. 1-35 only

Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*,
Harvard Civil-Rights Civil-Liberties Law Review

Glenn C. Loury, *Crime, Inequality and Social Justice*, *Daedalus* (2010)