

Law Foundation Report
Hannah Canham, Law Foundation Fellow 2014

I am pleased to report on my progress as a recipient of the 2014 Law Foundation of South Australia Fellowship. In addition to the George Murray Scholarship, the award enabled me to complete a Master of Laws at Columbia Law School in New York City.

In completing my LLM at Columbia Law School, I focused my studies on human rights and the criminal justice system, exploring coursework, clinical practice and self-directed research in mass incarceration, prisoners' rights, police accountability, forensic evidence and comparative constitutional law, amongst other topics.

In Fall 2015, I completed the Mass Incarceration Clinic, representing Federal and state prisoners challenging their conditions of imprisonment. Under the supervision of Professor Brett Dignam, I represented a death row prisoner in Connecticut, challenging the constitutionality of his prolonged solitary confinement. Simultaneously with our litigation, our client's capital defense team was appealing his sentence, and the state of Connecticut was challenging a decision that the death penalty violated the state's constitution.¹ Meeting with our client at the state's Supermax facility, and collaborating with his capital defense team at such a fascinating moment in the state's history with the death penalty was an extraordinary experience. An excellent seminar series about punishment theory, the history of American prisons, and racial critiques of mass incarceration accompanied the clinic's practical component.

As an invited participant in Professor Dignam's Advanced Federal Prison Litigation course the following semester, I prepared an administrative appeal known as an Article 78 petition under the New York Civil Practice Law and Rules. The petition challenged a decision of the New York Board of Parole. Our client had served more than 30 years for the second-degree murder of her ex-husband. Despite an exemplary record over the course of her incarceration, the Parole Board had denied her five applications.

¹ *State v. Santiago*, 318 Conn. 1, A.3d (2015).

Shortly after graduation I had the opportunity to argue the application before Justice Barbara Jaffe in the Supreme Court of the State of New York. Our primary ground of review was that the Board had failed to apply the requisite statutory criteria, instead basing its decision solely on the seriousness of our client's offence. The application was successful.² The court found that the board's decision was arbitrary and capricious, and ordered a new hearing before a differently constituted parole board. A few months later she was released. It was deeply gratifying to have helped ensure that our client received a fair parole hearing, according to law.

Back in the classroom, and perhaps my two most rewarding coursework subjects were Comparative Constitutional Law with Professor Jamal Greene, and Antidiscrimination, Equality and Disparity with Professor Olatunde Johnson. Both courses required critical analysis of the role of courts in enforcing human rights domestically and around the world. The coursework was rigorous, challenging and intellectually rewarding, testing my ability to understand and condense large volumes of reading material across multiple jurisdictions, the depth and breadth of which I had never encountered in academic study before.

Over the course of the year, I completed a number of research papers, one of which was on Justice Reinvestment, a policy essentially designed to reduce the money spent on imprisonment and redirect the savings towards investment in the highest-incarceration communities. Justice Reinvestment has been utilised in the United States for more than 10 years, and is gaining momentum in Australia as a means to address Indigenous over-incarceration. I examined lessons for the Australian context from the United States' experience and considered the framing of Justice Reinvestment as a response to both economic and racial inequality. A second paper analysed the legal and institutional mechanisms for police accountability in the Northern Territory, particularly in the context of the Northern Territory's paperless arrest laws. Finally, I examined the notion of split-admissibility in expert forensic pattern-matching evidence.

² *Ely v New York State Board of Parole*, Index No. 100407. (NY Sup Ct, 2016).

In Spring 2016, I completed an internship in the Criminal Defense Practice at the Bronx Defenders. The Bronx Defenders is a holistic public defender office operating in the poorest Congressional District in the United States: the South Bronx. One of my main duties was to help staff the arraignment shift, interviewing clients in the holding cells of the Bronx County Criminal Court before making bail applications on their behalf. I also conducted a Know Your Rights training at a Bronx middle school, teaching students about their rights in police interactions. At the Bronx Defenders, I bore witness to the heavy policing of low-level, non-violent misdemeanour offenses such as turnstile jumping and marijuana possession, disproportionately focused on poor communities of colour. It was inspiring to see the way the practice dealt not only with an individual's criminal charges, but also the web of serious collateral consequences that follow for offenders and their families, including in relation to immigration, child welfare and public housing.

Further, I edited a chapter of the Jailhouse Lawyers Manual, a handbook of legal rights and procedures stocked in prison libraries across the United States, and volunteered in the Domestic Violence Workshop Uncontested Divorce Project, where I filed divorce proceedings for a victim of domestic violence. I attended conferences, including Yale Law School's Rebellious Lawyering 2016 and attended by guest-lectures by speakers such as Stephen Bright, founder of the Southern Centre for Human Rights, who is fighting racial-bias in jury selection in the South.

I graduated from Columbia Law School on 18 May 2016, as a James Kent Scholar. I had a rich experience of challenging academic development, and eye-opening, rewarding legal practicing experience. My mentors at Columbia Law School were brilliant and passionate. I deepened my understanding of racial and economic inequality in the criminal justice system, and discovered new and creative ways to use the law as a means of achieving social change. These lessons have proven invaluable in my current role in the Appeals and Strategic Litigation team at Victoria Legal Aid, as I am sure they will into the future.

On a personal note, my partner and I loved living in New York City. We attended plays, museums and galleries, were enthralled by the 2016 primary elections, and soaked up the city's parks and other attractions.

I am truly grateful for the support I received through the Law Foundation of South Australia Fellowship. I wish to thank sincerely the Law Foundation of South Australia, and in particular her Honour Justice Kelly, for extending to me this tremendous opportunity.