

A Bridge Between The Ivy League And The Jailhouse: An Interview with Brett Dignam, Clinical Professor of Law and Supervising Attorney at Yale Law School

by Todd Matthews

Thirty years ago, Brett Dignam would not have believed she would spend her career as an attorney advocating for prisoners' rights. Dignam's passion at the time was performance, and she was deeply interested in teaching children's theater.

"Law school was something I did so that I would have enough credibility to start my own theater," she explains.

That changed, however, in the early-1980s when she needed a part-time summer job and was hired by attorney Dennis Curtis, who was then heading up a law clinic at the University of Southern California. Dignam's task was to manage the cases that students had started in the spring. Her first client was serving a federal sentence, having already served state time. "During the first visit, I read his handwritten petition for a writ of habeas corpus and was very impressed," she recalls. "He had become a published playwright and poet while inside. We were almost exactly the same age but we had grown up in different neighborhoods."

Dignam's career in prisoners' rights advocacy was sealed when she asked Curtis -- who had left a small Washington, D.C., boutique law firm after arguing in the Supreme Court a few years out of law school -- why he had left that practice. It was simple: he liked his clients more and enjoyed the work. "He was correct," says Dignam. "The work is compelling. The clients are remarkably self-reliant -- they have no one else most of the time, very knowledgeable about the system and excellent teachers. Plus, you get to talk about the Constitution and are forced to come up with creative legal theories in order to avoid terrible precedent."

Since 1992, Dignam has been on the faculty at Yale Law School, where she is Clinical Professor of Law and Supervising Attorney. Dignam and her students have helped prisoners in issues of medical claims, claims of sexual assault, felon disenfranchisement, challenges to sex offender classification, and cross-gender pat searches through three important clinics -- Prison Legal Services, Complex Federal Litigation, and Supreme Court Advocacy.

PLN spoke with Dignam about her interest and work in prisoner rights issues, what she hopes to achieve at Columbia, and her thoughts on young people pursuing this field of law.

PRISON LEGAL NEWS: Are there two or three cases, decisions, or areas of reform you were involved in as a private practice attorney that would be considered 'landmark' or significant?

BRETT DIGNAM: In private practice, no. That is the reason I left that practice. I did work for 20 months or so for a small division at the Department of Justice, Criminal Appeals and Tax Enforcement Policy. Eight lawyers from that section traveled around the country arguing criminal tax appeals. We had interesting initiatives under the then new Money Laundering statutes and did a bunch of motor fuel excise tax cases involving the Russian mob on Long Island. We prosecuted high-level oil officials who learned what conspiracy was all about. The power of the prosecutor to confess error is a great tool. The ability to say no to ambitious politicians who want to use the tax law to further their own careers through high-profile indictments was also interesting. The chief of that section was an old school Bobby Kennedy hire who understood that the goal of the department is justice.

PLN: In 1992, you joined Yale Law School as an associate clinical professor. Most notably, you have supervised law students who have assisted prisoners at the Federal Correctional Institution (FCI) for women in Danbury, Conn. Describe the program and the work students do on behalf of prisoners.

DIGNAM: Denny Curtis and Steve Wizner were hired in 1969 and 1970 by rebellious students who wanted to begin helping people while in law school. They created a clinic that focused on federal parole. The students were disturbed by the unfettered exercise of discretion and advocated for more structure. Congress passed the Parole Reorganization Act creating parole guidelines that led to the Sentence Reform Act and federal sentencing guidelines. Careful what you wish for.

After parole disappeared, we broadened the work we did for inmates. In 1994, Danbury became an institution for women and we saw a dramatic change in the issues. Sexual assault dominated our docket. Adrian LeBlanc, in her wonderful book *Random Family*, describes one of the early cases we had. A woman was impregnated with twins by her work supervisor. We had been contacted by her defense attorney and asked to help get her an abortion. She changed her mind and we represented her on health care issues and later in a Federal Tort Claim and *Bivens* action. Although the local U.S. Attorney's Office has prosecuted numerous staff members, the contact has been outrageous. We have also done a number of immigration and medical cases.

PLN: How do prisoners learn about the program?

DIGNAM: We have an excellent relationship with the inmate librarian who keeps applications for our assistance in English and Spanish -- Danbury is also an immigration site. We have done "know your rights" power point presentations and produce packets on topics of interest. A former warden allowed us to meet with her inmate advisory board; those women identified topics of particular interest and we developed information.

PLN: How many students are helping prisoners at any given time?

DIGNAM: Usually around 20 students in my clinic. There are other clinics who focus on immigration, detention and national security issues. At times, students from those clinics also represent prisoners.

PLN: What issues do they address?

DIGNAM: Medical issues have been a big area recently. Sexual assault is a priority as well. Unfortunately, issues involving children in other states are difficult for the students to handle effectively and are often a high priority for the women. Occasionally, we will handle a particularly difficult parole or habeas issue, but Connecticut defendants have a right to appointed counsel through habeas appeal.

PLN: Are there one or two cases stu-

dents have been involved in over the years that have had significant benefits to FCI prisoners?

DIGNAM: *Peddle v. Sawyer* got a lot of attention. The perpetrator was perhaps uniquely bad -- arrested for masturbating in front of a gym with a glass wall and returned to work in the trauma unit. We brought a claim under Violence Against Women Act which allowed us to describe the conduct as violence. We were appointed to represent a woman in a habeas challenging cross gender pat searches. Unfortunately, it had fatal Prison Litigation Reform Act exhaustion problems but the judge allowed us to make a full record, kept the preliminary injunction prohibiting the searches in place and held her decision until our client was released. We created a record and conducted discovery that will be very helpful in a case we have now litigating the same issue on behalf of a Muslim woman.

PLN: I'm interested in what the future looks like for attorneys representing prisoners. I'm guessing there's a bigger draw to pursue corporate law or another field. Yet, there also seems to be more opportunities at the university level for students to get involved -- particularly through innocence projects and prison law clinics -- than existed 20 years ago.

DIGNAM: My anticipated move to Columbia has sparked a lot of concern among the students about the continuation of the prison clinic at Yale. This concern was raised during the Liman Public Interest Conference last March as both Denny Curtis and Steve Wizner were honored (both are allegedly retiring). Bob Dinerstein from American University cited a study that reported there were 11 prison clinics in the country at this point. My sense is that the momentum is in the direction of representing those in immi-

gration detention. We have a Wrongful Conviction Commission in Connecticut and I taught a seminar with Mike Lawlor (sponsor of the bill that created it) to help create its structure. The public defender's office now has an office and we have had one high profile exoneration. Karen Goodrow is the dynamic lawyer who spearheads that effort. She would love to supervise law students and my sense is that the students would love to represent the innocent. My own bias is that someone needs to represent the guilty who are incarcerated and housed in deplorable conditions. Students remain passionate about the prison conditions work. They like tilting at windmills and like struggling with the procedural hurdles, pushing to find creative ways around them.

PLN: What is your sense in terms of the number of students you see who have an interest in prisoners' rights as a career?

DIGNAM: A relatively small number but Sara Norman, one of my first two supervisees, is now the Managing Attorney at The Prison Law Office. One of the other lawyers was also a student here and others have worked there. Robin Toone, Sara's supervision partner, did prison work with Steve Bright for a few years and wrote *Protecting Your Health and Safety* [which is distributed exclusively by PLN]. Even though the numbers are small, they do great work.

PLN: Do you see similarities among those students who do show an interest in the field?

DIGNAM: I have had a number of math majors and a number of professional musicians. Go figure.

PLN: How big of a role does a university play in steering students toward this field of law?

DIGNAM: Yale prides itself on promoting and encouraging public interest

careers. We are incredibly fortunate to be fully funded by the university, other than some litigation expenses which we finance with attorneys fees. I think the identity and style of the supervising attorney plays a big role. Doing work in federal court is a draw. Our civil procedure faculty -- Harold Koh and Judith Resnik, particularly -- teach habeas and believe it to be important so the students are introduced to that aspect of the work during their first semester.

PLN: What is the picture like for prisoners in Connecticut jails and prisons?

DIGNAM: Grim but nothing like Florida or Texas. Twenty of the facilities went on line in the 1990s and are the "shopping mall atrium" style with high ceilings and natural light. Northern, our supermax, has never been filled with the "worst of the worst" it was built to house. It is poured concrete, reflective glass and stainless steel. Very disorienting and depressing. There are far too few jobs and lots of idle time. The staff reports a real difference between the northern part of the state where the correctional officers describe themselves as "cowboys" and the southern part of the state.

PLN: How many people are incarcerated, and has that number increased or decreased in recent years?

DIGNAM: We had rampant overcrowding and decades of litigation that ended with the doubling of the number of facilities in the 90s. We are back to being overcrowded.

PLN: What area(s) of prison and jail reform need the most work in Connecticut?

DIGNAM: We need better treatment and alternatives to incarceration for those with mental health issues. We need a strategy to deal with the health needs of an aging population.

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Interview with Brett Dignam (cont.)

be leaving Yale Law School to become a clinical professor of Law at Columbia Law School in fall 2010. Why have you decided to start this new chapter in your career?

DIGNAM: Personal reasons largely drove the decision. My youngest children (twin daughters) graduate from high school next June. This opportunity fell in our laps: my spouse teaches tax law and will also move to Columbia. Moving to the city was appealing. Change is good and there appears to be no shortage of prison work in NYC.

PLN: What do you hope to achieve at Columbia Law School?

DIGNAM: I would like to look at what the needs of the prison population are and how we can be useful. Preliminary conversations suggest that the students would add value by interviewing prisoners and vetting potential cases for the firms. Developing interviewing and client counseling skills is an important piece of clinical education. Every lawyer should understand the impact of our criminal justice policy and no one does without visiting a prison and, ideally, representing a prisoner. Columbia students have been doing state parole and family law work for years with Philip Genty. I hope to focus on conditions work in federal court. The Columbia students are extremely enthusiastic about expanding their work. I am hopeful that we can collaborate with other organizations that are already doing stellar work and help them craft new legal theories.

PLN: You have been involved with prisoners' rights issues for more than 20 years. In your opinion, what have been the biggest overall achievements in the field?

DIGNAM: The development of premier offices that focus on prisoners' rights and that are led by excellent and dedicated lawyers. The emergence of *Prison Legal News*, an intelligent and authoritative voice led by those with actual experience. The increasing involvement of international human rights organizations who have investigated and reported on our society's disturbing fascination with and commitment to mass incarceration.

PLN: What areas still need more improvement?

DIGNAM: The United States Supreme Court would greatly benefit from a member who has had a relative or close friend behind bar. [Editor's Note: justice Clarence Thomas's nephew Mark Martin,

is currently serving a 30 year federal sentence for distributing drugs. Justice Thomas routinely votes against prisoners and criminal defendants alike.] We could repeal or amend the Prison Litigation Reform Act so cases could actually get to court and lawyers would have an incentive to bring them. We could re-establish rehabilitation as a goal of sentencing and incarceration. We could establish programs that would allow mothers to be with their babies for a couple of years. We could provide educational opportunities to prisoners and teach them real skills so they are employable when they are released. We could always use more lawyers, particularly for the cases that have great dignitary harm but are unlikely to result in large verdicts. 🐼

[Editor's Note: Brett Dignam and the law students of Yale currently represent PLN in a public records action before the

Connecticut Freedom of Information Act commission. As I meet lawyers who do prison and jail litigation I often ask them how they got interested in the work. At least 7 have told me it was because they took Brett's courses at Yale and were introduced to the theme. Brett does a great job of giving her students an opportunity to experience the criminal justice system firsthand through the work itself, speakers and visiting facilities. I have been a speaker on prison and criminal justice issues at Yale several times since my release from prison and can only say that Columbia's gain is Yale's loss. As a practical matter, Brett has provided a living example of how a dedicated instructor can have a serious impact on nurturing a new generation of prisoner rights lawyers; helping prisoners who have suffered grievous injury and further educate law students by giving them real world litigation experience they would otherwise not obtain. Paul Wright.]

Florida's Private Prisons Still Lack Meaningful Oversight

by David M. Reutter

Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA) has issued a report that finds that oversight of the state's private prisons has strengthened under the Department of Management Services (DMS) but significant weakness still abounds.

The Florida Legislature authorized private prisons in 1989. When the Florida Department of Corrections (FDOC) had not contracted for any privatization by 1993, the Legislature established the Correctional Privatization Commission to realize the savings that are ballyhooed by privatization advocates. As *PLN* previously reported, the Commission's first executive director was fined and fired for ethics violations and the second imprisoned for embezzlement of state funds.

That prompted the legislature to abolish the Commission and place responsibility for private prison contracting and oversight under the charge of DMS. Of the 19 states to have private prisons, only Florida places administrative responsibility for private prisons outside of its prison agency or a prison commission overseeing both public and private prison systems.

As of October 1, 2008, Florida's six private prisons housed 7,725 of the state's 99,048 prisoners at an approximate annual cost of \$133 million. By Florida law, private prisons must save 7% of the cost of operating a comparable state prison while housing a representative cross-section of the state's prison population. Due to the corruption of previous years, it is doubtful taxpayers ever realized this savings.

To strengthen its oversight, DMS created a 300 item evaluation checklist that established detailed contract monitoring requirements. Once implemented in October 2007, the oversight resulted in removal of three prison wardens and assessment of \$3.4 million in deductions and fines.

Nonetheless, a critical weakness is that DMS has failed to address problems identified by FDOC's reviews of security, contraband and health infirmity operations of private prisons. The security issues include inoperable alarms, spotlights and escape sensors. Tool control and checking for tunneling under buildings has also been a problem. The infirmity operations include lost or never executed laboratory tests, unsanitary conditions and nursing staff vacancies. Contraband issues involve drugs, gang