



Confrontation, Cooperation, and Collaboration: (En)Countering Disagreement in Pursuit of the Public Interest

At the Fourteenth Annual Liman Colloquium, we began to peel back the layers of “public interest lawyering” to understand the ways that advocates in and out of government engage with potential adversaries. Officials from all branches and all levels of government gathered with Liman Fellows, students, scholars, and practitioners to discuss how collaboration and confrontation work in practice. What follows are snapshots of panel exchanges as well as essays by current and former Liman Fellows.

In and Out of Government: A Conversation

Panelists on *In and Out of Government: A Conversation* reflected on the distinct challenges and opportunities presented by local, state, and federal government service.

“This is the question: who is the client? For a law firm, it’s easy—you have a retainer and a client. But in government, it’s tricky. We talk about working for ‘the public interest,’ but if you’re working for government, you have a number of people whose ideas you must take into account. Where you have the room to use your own ethics, goals, and ambitions, ultimately you’d better tether yourself to something – to be able to say this is for whom I’m working.”

– **Ronald Weich** is Assistant Attorney General, U.S. Department of Justice, Office of Legislative Affairs. He served as Chief Counsel to Senators Harry Reid and Edward M. Kennedy as well as Special Counsel to the United States Sentencing Commission.

“Collaboration is key. When we were working on death penalty abolition in the 1990s, I realized that no one had talked to the victims. We were just abolitionists talking to abolitionists. So we started talking to unlikely allies – conservatives, victims, law enforcement. That model has really taken off among advocates across the country. The politics of crime are moving.”

– **Virginia E. Sloan** is President and Founder of The Constitution Project. Sloan was Executive Director of the Task Force on Gender, Race and Ethnic Bias of the U.S. Court of Appeals for the District of Columbia, and Counsel to the U.S. House Judiciary Committee.

“The different treatment for crack and cocaine for sentencing highlights for me how hard it is to undo past mistakes and to compromise. In 2010 we took the disparity from 100:1 to 18:1. Arguably, that just makes us a little bit less racist. But as a legislator, as an advocate, when do you say, OK, let’s take what’s on the table?”

– **Jeffrey Robinson** is Associate Director-Counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF). Robinson was Deputy Assistant Attorney General for DOJ’s Office of Legislative Affairs, and Principal Deputy Corporation Counsel for the District of Columbia.



Kate Stith, Virginia Sloan, Ronald Weich, Jeffrey Robinson, Elizabeth Esty

“It seems you have to be careful of unintended consequences of top-down reform. Take the federal sentencing guidelines—the thinking was that disadvantaged people and people of color would get the same sentences as everyone else. And they did—everyone’s sentence went up.”

– **Kate Stith** is Lafayette S. Foster Professor of Law at Yale Law School. Stith, a former federal prosecutor, is the author of *The Arc of the Pendulum: Judges, Prosecutors, and the Exercise of Discretion*, 117 Yale L.J. 1420 (2008), and *Fear of Judging: The Federal Sentencing Guidelines* (with José A. Cabranes) (University of Chicago Press, 1998).

“Things come together in a political moment. You can work on something for decades, and nothing happens. But then something happens—a crime, an attack—and everyone jumps in. The horses are racing, and you’d better hang on for dear life because that may be your one opportunity.”

– **Elizabeth Esty** is a candidate for Connecticut’s 5th Congressional District of the U.S. House of Representatives. Esty served from 2008 – 2010 as State Representative for Connecticut’s 103rd District and lost a very close re-election bid in 2010. Unlike her opponent, Esty supported abolition of the death penalty.

Crossing Boundaries: Immigrants and Rights in Local, State, and Federal Governments



Lucas Guttentag, Margo Schlanger, Joanne Lin, Eliza Leighton, Michael Wishnie, and Hope Metcalf

Panelists on *Crossing Boundaries: Immigrants and Rights in Local, State, and Federal Governments* reflected on current debates over the treatment of non-citizens in the United States and on the possibilities for cooperation between private and public actors, as well as among different branches of state, local, and federal government.

“Collectively, as a movement we need to be engaged in confrontation as well as prepared for collaboration and cooperation, using these approaches in a combined and synergistic way. That doesn’t mean every person or organization needs to play all those roles. In fact, it often works better when different entities use different tools to achieve the same end.”

– **Lucas Guttentag** is Robina Foundation Distinguished Senior Fellow in Residence and Lecturer in Law at Yale Law School. In 1985, Guttentag founded the ACLU’s Immigrants’ Rights Project, which he directed until 2010.

“Collaboration and cooperation are possible when there is a level of both real and perceived equity between the partners. There is real potential to see victories come not from confrontation but collaboration, but if community-based organizations are part of that collaboration, we need to be mindful about how much power we have to win our end goals. We need to be honest about what power we have, and then be realistic about the most effective way to win change.”

– **Eliza Leighton** is Director of Strategic Initiatives at CASA de Maryland, Maryland’s largest immigrant rights organization. Leighton, a former Liman Fellow, co-founded Stand for Children.

“My job is to ensure that the Department of Homeland Security’s activities do not diminish anyone’s civil rights or civil liberties. Receiving reliable information from advocates is essential—that is the only way that an office of 100 can do the task that we do, which involves over 190,000 civilian

employees, over 40,000 military personnel, and operations that touch nearly every American. We can’t do our job without collaboration; we count on it.”

– **Margo Schlanger** has led the U.S. Department of Homeland Security’s Office for Civil Rights and Civil Liberties since January 2010. A Professor of Law at the University of Michigan, her research focuses on empirical analyses of litigation.

“When it comes to confrontation with the government, we need to think beyond litigation. We have seen some small reforms under the Obama Administration in the area of improving immigration detention conditions. I attribute that change to sustained press coverage. We also need to think creatively about pressure points and how to leverage them. Lawmakers in both parties are keenly aware of the growing Latino electorate, and we must reach out to other constituencies, such as unions and civil rights groups, who will take up issues that disenfranchised immigrants cannot.”

– **Joanne Lin** is Legislative Counsel, ACLU Washington Legislative Office. Prior to joining the ACLU, Lin was Director of Legal Momentum’s Immigrant Women Program.

“Whether and how to collaborate is an important question and a very live one. On the immigration front, it boils down to how progressives should behave in the age of Obama. On almost every issue, the problem doesn’t go away when some friends enter the federal government. They don’t need to be persuaded, but they are telling us there are limits on what they can do, to be patient, to understand the politics. So the question is whether the change in administration changes the work that we do. I’m not sure it does.”

– **Michael J. Wishnie** is Clinical Professor of Law at Yale Law School. Wishnie co-teaches the Workers and Immigrants Rights Advocacy Clinic, and in 2010, he founded the Veterans’ Legal Services Clinic.



Lucas Guttentag, Margo Schlanger, and Joanne Lin

Immigrants' Rights in Maryland: Building A Base for Collaboration and Change

Eliza Leighton, Liman Fellow 2005-06, and Director of Strategic Initiatives, CASA de Maryland

The theme of the Liman Colloquium this year—"Collaboration, Cooperation and Confrontation"—in many ways is a good summation of much of my time at CASA de Maryland over the past six years. CASA is a membership-based immigrants' rights organization. We rely on consistent, intentional, and creative collaborations with our members, with other nonprofits, funders and, in some cases, with the government. Over the past six years, however, confrontation has become increasingly necessary both to achieve positive change and to prevent destructive policies and practices. Instead of the passage of meaningful federal immigration reform, we have instead seen an increase in federal immigration enforcement and local and state anti-immigrant policies. In that climate, confrontation is most often—and

sometimes the only—appropriate response.

CASA was founded over twenty-five years ago to provide basic services to immigrants from Central America. CASA has grown into one of the largest state-based immigrant rights organizations in the country. We work primarily with Latino immigrants, but given the changing demographics of the foreign-born community in Maryland, about twenty

percent of our members are now African. Most of our members are very low income, often living in substandard housing. Many are victims of wage abuse and human trafficking—with little or no access to governmental services.

Learning from successful movements, we recognize the need to build real power in local communities in order to win and sustain positive changes at the local, state, and national levels. Thus, we approach our work with two interlocking goals: first, meeting the immediate needs of low-income immigrants through direct services, and second, working with those same individuals and others on organizing and advocacy campaigns. This hybrid model best places us to create change in Maryland and be supportive of change in other parts of the country.

For low-income immigrant communities in Maryland and throughout the country, the situation is bleak. Immigrants have been deeply affected by the economic downturn, and the possibility for comprehensive immigration reform that was once a bright spot in difficult times is no longer likely. In Maryland, while we have been able to defeat numerous versions of anti-immigrant legislation seen elsewhere, we

have not been so effective at stemming the cooperation between local police and federal immigration enforcement. When I first started working in the field, there was the common understanding that local police were different than Immigration and Customs Enforcement (ICE). Now that is not the case. And as a result, the trust between community members and the police, a bedrock principle and necessity of community policing, is gone.

At CASA, we are working with more and more members and their families who are in deportation proceedings as a result of fairly routine interactions with the local police. The case of one of CASA's members, Maria, provides a vivid example. Maria is the mother of a toddler who is a U.S. citizen. In December 2009, she had an argument with her baby's father and called the police for help. When they arrived at her home she told them that he had left, but they insisted on searching her apartment anyway. Five months later an arrest warrant was issued against her based on the police's statement that they had seen several phone cards in her apartment and that she was therefore selling them. Charged with operating an unauthorized business, she was taken into custody, incarcerated, and reported to ICE through the Secure Communities program. The criminal charges were dropped, yet she was taken into custody by ICE. She was released with an ankle bracelet, pending removal proceedings, so that she could care for her infant child. Given that Maria's case is not unique, we have been forced to spend an increasingly large amount of time fighting on the behalf of individuals like Maria while also working for systemic changes to alter such destructive programs.

While we find ourselves confrontative on behalf of our members, we would prefer to work in collaboration and cooperation with policymakers and law enforcement. But, as the last six years have taught me, that is only possible if CASA and our members have a respected place at the bargaining



Eliza Leighton, Liman Fellow 2005-06



Joanne Lin, Judith Resnik, and Eliza Leighton

table. Over the past few years, we formed CASA in Action, a 501(c)(4) sister organization, and started our membership program. We now have over 10,000 dues-paying members. In the last election cycle, we did a very public round of endorsements, and in some of the tight races our endorsements made a difference. As is true with respect to other controversial

issues, finding a common moral or value-based ground with potential opponents will not always be possible. It is only from a position of strength that we will be able to find ways to work with potential adversaries to meet the needs of low-income immigrants in Maryland and beyond. ♣

Quantifying the Impact of Immigrant Representation

Lindsay Nash, Liman Fellow 2010–11, Immigration Justice Clinic, Cardozo Law School



Susan Hazeldean, Liman Fellow 2001–02, and Lindsay Nash, Liman Fellow 2010–11

Immigrants' rights advocates have long known that legal representation is essential to fair outcomes in removal proceedings and have sought to expand access to counsel in myriad ways. Without counsel, immigrants are, as a practical matter, simply unable to utilize procedural protections or present meritorious defenses in immigration court.¹ For that reason, advocates have long opposed the Department of Homeland Security's practice of detaining large numbers of those in removal proceedings and transferring many detainees to remote jurisdictions where legal resources are scarce. Up to this point, however, advocates have had to rely on largely anecdotal evidence of the problems.

During my year as a Liman Fellow, I have worked with the Study Group, which is a working group of practitioners and experts convened by Judge Robert A. Katzmann of the Second Circuit to ascertain and to meet the needs of unrepresented New Yorkers in immigration proceedings. A key part of our work has been the New York Immigrant Representation Study (NYIRS), a joint project with the Vera Institute of Justice, to assess the legal needs of New Yorkers in removal proceedings.

In May 2011, we released preliminary findings regarding the impact of detention and representation on immigration

outcomes.² After matching data from the immigration court system with data from the immigration enforcement agency, the NYIRS found that the two most important variables in a successful outcome in removal proceedings are (1) whether respondents are represented; and (2) whether they are detained. Represented, non-detained individuals obtained immigration relief 74% of the time, whereas unrepresented, detained individuals were able to do so 3% of the time. In addition, the second factor—detention—greatly affects the first; detained respondents are significantly less likely to be represented. Detained respondents in New York immigration courts, for example, are more than twice as likely (60%) to be unrepresented than those who are not detained (27%). The data further show the impact of transferring detained respondents to far-off detention centers; individuals who are detained and transferred are more likely (79%) to be unrepresented than respondents detained in the New York detention area (60%). The NYIRS preliminary findings suggest that current detention and transfer policies make it extremely difficult for respondents to obtain representation and, without representation, respondents are far less likely to obtain a successful outcome.

The preliminary findings have thus far garnered national and regional press and led some large law firms in the New York City area to expand pro bono commitments to deportation defense. The NYIRS findings have resonated in Washington as well; at a June 2011 hearing by the Senate Judiciary Committee regarding the immigration court system, Senator Patrick Leahy referenced the NYIRS findings when he called for increased representation for detained immigrants who might otherwise lose meritorious immigration cases. The issues identified by the NYIRS study—the impact of counsel, the numerous barriers that detention creates for noncitizens in removal proceedings, and the degree to which those barriers are exacerbated by transfer to far-off areas—are not new, but it is hoped that the accumulation of reliable data on their existence and effects will facilitate new solutions. ♣

¹ *Padilla v. Kentucky*, 130 S. Ct. 1473, 1484 (2010).

² The preliminary findings are available here: <http://graphics8.nytimes.com/packages/pdf/nyregion/050411immigrant.pdf> and will be published in the *Cardozo Law Review*.

Preserving the Immigration Class Action: *Alli v. Decker*

Michael Tan, Liman Fellow 2008–09, and Staff Attorney, ACLU Immigrants' Rights Project

Class actions matter to the defense of immigrants' rights. For many immigrants, language barriers and unfamiliarity with the U.S. legal system pose significant barriers to court. Moreover, because deportation is viewed as a civil penalty, the law has not recognized a right to appointed counsel in immigration proceedings. Immigration detainees in particular are overwhelmingly unlikely to have a lawyer; a recent study by the American Bar Association reports that 84 percent of immigration detainees lack counsel.¹ The class action is thus a crucial means of protecting the rights of immigrants who would otherwise go unrepresented.

The ability to challenge immigration practices via class actions was at issue in *Alli v. Decker*, 650 F.3d 1007 (3d Cir. 2011), a case I helped to bring in the spring of 2009 when I was a Liman Fellow at the ACLU Immigrants' Rights Project (IRP). Along with my supervisor, IRP Deputy Director Judy Rabinovitz, my co-counsel are Vic Walczak and Valerie Burch of the ACLU of Pennsylvania, and the law firm of Pepper Hamilton, LLP. *Alli* seeks relief on behalf of a class of lawful permanent residents (or green card holders) who have been subjected to prolonged detention in Pennsylvania without ever receiving a basic form of due process—a bond hearing when the government must demonstrate that their detention is justified. Under Department of Homeland Security's (DHS) policy, hundreds of immigrants in Pennsylvania—and thousands nationwide—whom DHS is seeking to deport based on criminal history are routinely subjected to such prolonged mandatory detention, even though many of them may be able to meet the requirements for bond because they pose neither a flight risk nor danger to the community, and they may have legal grounds to challenge their removal.

The case of Alexander Alli is illustrative. Mr. Alli, who is married to a U.S. citizen and came to the U.S. in 1990 from Ghana, was held by the immigration authorities for more than a year despite being eligible to apply for a waiver that would allow him to seek a new green card and remain in the country.

The district court initially dismissed our class claims while granting habeas relief to our individual plaintiffs. The district court found that that a 1996 amendment to the Immigration and Nationality Act stripped the federal courts of jurisdiction



Aaron Polodny, Yale Summer Liman Fellow 2011 (left), and Claire Pavlovic, YLS 2011

to issue classwide relief in the immigration context. While the individual success was significant, it was frustrating not to achieve the same results for others in Mr. Alli's circumstances.

We appealed to the Third Circuit, and I argued the appeal. The court, in an opinion authored by the Honorable Louis H. Pollak, ruled that immigration detainees who have been detained for months or even years while contesting their removal can be entitled to pursue classwide claims that their mandatory detention is unlawful. We will now be renewing our motion for class certification at the district court and hopefully proceeding on behalf of the

hundreds of other immigrants like Mr. Alli and Grenade who remain unlawfully imprisoned.

By clarifying that the 1996 immigration act does not eliminate classwide relief, *Alli* opens the door to the immigration class action in the Third Circuit. The ACLU won a similar ruling in a detention class action in the Ninth Circuit in 2009, *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010). *Rodriguez* has enabled the ACLU to file a class action challenging the government's failure to ensure due process for mentally ill and disabled immigrants in removal proceedings. See, *Franco-Gonzales v. Holder*, No. 10-02211 (C.D. Cal., filed Mar. 26, 2010). The groundwork for that case was laid in part by Alice Clapman, Liman Fellow 2006-07. ♣



Liman Student Board Members, Rachel Clapp, YLS 2012, and Matthew Smith, YLS 2012

¹ ABA Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* 5-8, (2010), available at <http://new.abanet.org/immigration/pages/default.aspx>

Border Patrol, Due Process, and the Good Shepherd

Elizabeth Simpson, Liman Fellow 2010–11, Southern Center for Social Justice

In April 2010, over eighty members of *Iglesia Buen Pastor* (Church of the Good Shepherd) traveled more than 1200 miles from North Carolina to Houston, Texas to celebrate *Santa Cena*. The holiday, a commemoration of the Last Supper, brings together each year thousands of worshippers from across the country. Following a joyful event, the North Carolina group—mostly families and children—began their journey back home.

On the evening of April 14, 2010, while crossing into Louisiana, immigration officers pulled over three of the group's passenger vans. The agents took the men into custody and put them into a separate vehicle for transport to the government offices. Agents also climbed into each of the church members' vans and drove the women and children to the Customs and Border Patrol (CBP) processing office located in Lake Charles, Louisiana. In one of the vans, the women began to sing to reassure the children. According to the later reports by the women, the agent driving the vehicle laughed, and said: "Do you think your God will save you from this?"

The scene at the processing center was bedlam. There were about 45 church members—about half of them children as young as one year old—sitting on the floor wherever they could find space. Agents conducted interviews in English or rudimentary Spanish. No interpreters were available, but agents insisted that members sign a form in English. Uncertain of the consequences, the church members asked to call an attorney, but the agents refused and told them that they had no right to a lawyer. Ultimately, after agents threatened to further detain the men separately from their wives and children, the group relented and signed the forms, which purported to concede removability. According to the church members, throughout the ordeal, the agents taunted the group for their religious beliefs and their national origin.

Since becoming a Liman Fellow with the Southern Center for Social Justice in Durham, North Carolina in October 2010, I have worked with members of *Iglesia Buen Pastor* to fight against their removal and for recognition of their rights. In March 2011, we filed a lawsuit in federal district court under the Freedom of Information Act. The lawsuit seeks all of CBP's records about the mass arrest—including copies of the snapshots that one of the agents took as a "memento."

In May 2011, we filed a suppression motion, *i.e.*, a motion to dismiss the immigration cases because there was no lawful basis to find the church members removable. The motion contends that the arrest was unconstitutional because Border Patrol lacked reasonable suspicion to pull over their vans,



Elizabeth Simpson, Liman Fellow 2010–11

engaged in unlawful racial profiling, and subjected the church members to coercive and fundamentally unfair interrogation. The government argued that immigration proceedings do not permit suppression motions, but the immigration judge disagreed and took evidence regarding whether the church members' rights were violated. In September 2011, the immigration judge denied the motion to suppress on the ground that the church members had not provided sufficient evidence of constitutional violations; that decision is now on appeal to the Bureau of Immigration Appeals.

Suppression motions are relatively rare in the immigration context. Because most arrestees are immediately deported without legal representation, it is common that the Department of Homeland Security (DHS) faces no consequences for abusive or coercive treatment. Most clients cannot afford to pay a private attorney for the extensive amount of time and effort that a suppression motion requires—especially when a positive outcome is far from assured. *Pro bono* lawyers tend to focus most of their limited resources on claims for *relief* from removal—cancellation, U visas, asylum—rather than going on the offensive to *dismiss* removal proceedings. Yet suppression motions are critical to holding DHS accountable for civil rights violations, so that officers know that they do not act outside of the law.

In April 2011, the *Santa Cena* was held in Indianapolis, Indiana. The North Carolina congregants made the trip once again—and this time, without incident. ♣

Accessing Racial and Environmental Justice: From Katrina to BP



Douglas Kysar, Benji Plener, Nan Aron, Mark Templeton, and Dennis Parker

Major environmental events—from hurricanes to oil spills—intersect with underlying difficulties in civil and criminal justice. In the context of Hurricane Katrina in 2005 and the British Petroleum oil spill in 2010, panelists considered responses by federal, state, and local governments.

“Natural disasters are something of an acid test. They provide a moment to test the concepts and the practices that we use on a daily basis to reassure ourselves that the systems we are embedded in are basically just. Recovery is an opportunity to experiment with new models of justice in the wake of revelation of injustice. We have humbled governments that failed to respond and reinvigorated communities who are emboldened to act.”

– **Douglas Kysar** is Joseph M. Field '55 Professor of Law at Yale Law School. Kysar is the author of *Regulating from Nowhere: Environmental Law and the Search for Objectivity* (Yale University Press, 2010) and *Did NEPA Drown New Orleans? The Levees, the Blame Game, and the Hazards of Hindsight*, 56 *Duke L.J.* 179 (2006) (with Thomas O. McGarity).

“What happened in New Orleans post-Katrina is a textbook example of structural racism. Housing discrimination, police brutality, inadequate schools, health care, and environmental racism all work together to disadvantage people of color and poor people. Added to that is the interconnection of the roles of the city, the state, and the federal government. What we saw is that government contributed to the devastation by its actions and inactions before and after the hurricane.”

– **Dennis D. Parker** is Director of the ACLU National Office's Racial Justice Program. Parker served as Chief of the Civil Rights Bureau of the Office of the New York State Attorney General, and he is an adjunct professor at New York Law School.

“There was an opportunity for reform after Katrina. For decades, there were no public defenders, just private attorneys who served virtually at the pleasure of judges and were paid based on a local system dependent on parking tickets. There was no office, no structure. After Katrina, the 2007 Public Defender Act created a state-wide system. In New Orleans, we now have an independent office and about 100 staff. This greater institutional presence, I think, is just the start of reform.”

– **Benjamin Plener**, a Liman Fellow in 2009–11, is now a staff attorney at Orleans Public Defenders (OPD). Plener helped to organize OPD's Pretrial Services Division and coordinates the pretrial track of the office's Special Litigation practice.

“In the wake of the 2010 Gulf oil spill—and in response to the time it took under the Exxon Valdez disaster—there was a political moment to have a compensation system set up in order to have funds start flowing effectively and faster than they would have under the judicial system. And those funds have started flowing to individuals affected by the BP oil spill. There remain complicated issues and complicated decisions of distribution and acceptance for people because of all that is unknown. We are doing the best with the information we have now.”

– **Mark Templeton** is Executive Director of the Office of Independent Trustees for the Deepwater Horizon Oil Spill Trust, where he works to ensure that the \$20 billion pledged by BP is available to address the claims of those affected. Templeton was Director of Missouri's Department of Natural Resources and Associate Dean for Finance and Administration and Chief Operating Officer at Yale Law School.

“We need an independent entity that can put a spotlight on British Petroleum and what happened. Are the courts the perfect forum? Probably not. But litigation allows discovery to help people understand what happened. We are going to be opening a lot more oil wells in the country—how do you hold them accountable? We need a system that is flexible for people who need immediate relief as well as for others who can wait a little bit and want to seek greater justice.”

– **Nan Aron** is President of the Alliance for Justice (AFJ), a national association of public interest and consumer rights organizations. In 2010, AFJ produced the film “Crude Justice,” which examined the effects of the Deep Horizon oil spill.

Collaboration and Confrontation in New Orleans

Benjamin Plener, Staff Attorney and Liman Fellow 2009–11, Orleans Public Defenders

The 2011 Liman Colloquium explored the relationships between legal reformers and those stakeholders whose conduct they seek to reform. As the title suggests, the conference focused on two canonical modes of engagement: confrontation and collaboration. As I reflect on my past two years as a Liman Fellow, working to reform the criminal justice and indigent defense systems in New Orleans, I find myself returning to these strategic questions of institutional engagement.

For decades before Hurricane Katrina brought national attention, New Orleans Parish was plagued by deeply entrenched structural problems. The parish locked up more people per capita than most other cities in the nation. The great majority of these people could not hire a paid lawyer; instead they got a part-time public defender. Those lawyers—who served at the pleasure of local judges and juggled their time between public and private cases—were funded by local parking tickets and operated with neither staff nor office.

In the wake of the storm, an energetic reform effort culminated in the Louisiana Public Defender Act of 2007. For the first time, Louisiana was to have an independent agency responsible for indigent defense, and New Orleans its own full-time indigent defense office, the Orleans Public Defenders (OPD).

As a law student, I found myself drawn to this reform effort, partly (in retrospect), because I understood it as a powerful model of confrontational engagement. I started at Yale days after Hurricane Katrina hit, visited New Orleans with fellow law students during my first intercession break, and then spent the summer of 2008 at OPD as one of its first post-Katrina law clerks. I witnessed first-hand as the office “went vertical”—for the first time, public defenders were assigned to clients and not courtrooms. Upon graduation, I was awarded a Liman Fellowship to help OPD strengthen representation in the crucial pretrial stage, including the weeks or months arrestees often wait in jail while the District Attorney’s Office decides whether to prosecute. I moved to New Orleans with a fierce determination to confront injustice and “change the system.”

Two years later, I approach my work at OPD with the same passion that motivated me as a law student, but I think quite differently about the role that I - and OPD - play in reform. Confrontation remains a vital mode of engagement, but I am often most successful when I can operate more collaboratively. The system is no longer an undifferentiated “thing that must change,” but rather a complex interaction between dynamic stakeholders, none of whom fancy themselves the “thing that must change.” The very narrative of reform that first drew me to this effort now strikes me as a liability, because it alienates those



Benjamin Plener, Liman Fellow 2009–11

whose buy-in is essential to further reform.

There is a tendency to associate criminal justice work with confrontation. The adversarial trial system is reified as a signal achievement of our constitutional democracy. But the vast majority of cases are resolved through plea bargaining, in collaboration with prosecutors and judges. And more of our clients could be diverted away from the criminal justice system and towards appropriate social services if we could collaborate more effectively with criminal justice stakeholders and community service providers. An individual client is poorly

served by a public defender whose only mode of engagement is confrontation. And if systemic reform is purely a matter of confrontation with other stakeholders, those other stakeholders will generally win. The structural problems that underlie mass incarceration in New Orleans cannot be addressed without deep connections among diverse community stakeholders. Though my original fellowship proposal emphasized litigation efforts, I ended up spending the bulk of the last two years on institutional development—building a new division of support staff in the office to help attorneys hit the ground running on new cases.

In many ways, collaboration is harder than confrontation. In confrontation, lines are clean—there are two sides, your side is right, and the goal is to win. Collaboration blurs these lines by shifting the focus towards shared goals and shared responsibility. Such collaboration is particularly challenging in a city where public defenders have historically been understood by the communities we serve as “part of the system.” When you collaborate with stakeholders in an imperfect legal system, you run the risk of legitimating injustice. Yes, the system needs public defenders, but often only as a suit at a podium, whose presence makes a conviction stick. At some point, accommodation becomes acquiescence and collaboration becomes cooptation. Far too often, the space between them is razor thin.

Of course, the best strategy often combines confrontational and collaborative elements. It is critical that the Department of Justice recently prosecuted NOPD officers that shot unarmed civilians in the aftermath of the storm and then covered it up. But it is equally important that our new mayor has invited the DOJ to help clean up the police department.

Such engagement is a tough tightrope walk, more an art than a science. You’re always checking in with yourself, and reassessing your strategic calculus. As I begin my third year with OPD, I look forward to exploring these issues more with the Liman community. ♣

Preserving the Oceans' Bounty: Allies and Adversaries

Seth Atkinson, Liman Fellow 2010-11, Natural Resources Defense Council

I worked at the Natural Resources Defense Council as a Liman Fellow in 2010-11, where I advocated for ocean sustainability and the strong management of our nation's marine fisheries. Since attending the Fourteenth Annual Arthur Liman Colloquium last March, I've found myself reflecting on the themes of confrontation, cooperation, and collaboration as they apply to my own work.

At first glance, it seems that fishermen and conservationists would have the same interests in managing fisheries. Both want abundant fish in the sea, and one could imagine both groups working toward a shared vision of an ocean teeming with fish. This is true, but far less so than one might hope. To understand why, some background is in order.

A major factor is that reliable data can be hard to find. Fisheries science is fairly imprecise, and even the best model results carry relatively high amounts of uncertainty. To illustrate, imagine flying over the Serengeti at night in a helicopter. Drop a net to the ground below, and pull up whatever gets snared in the net. Do that a few times. Based on what you pulled up, extrapolate the number of lions, zebra, and antelope in the whole Serengeti. That is roughly what we do to estimate fish populations. Because we can't observe what's going on directly, scientists are forced to make assumptions, extrapolate from available data, and use models.

Fishermen and conservationists tend to have different responses to this uncertainty. For fishermen, unless the data conclusively establish that lower catches are necessary, it doesn't make sense to catch fewer fish. Commercial fishing is a capital-intensive business, and most fishermen have heavy debt loads from their vessels and equipment—bills that keep coming, regardless of how many fish are caught that month. Faced with uncertain fish population estimates, fishermen understandably say, "Why lower our catches and risk bankruptcy, if we're not even sure of the data?"

Conservationists have a different response, given their goal of protecting healthy ecosystems. They point to collapsed fisheries around the world—the results of high catch levels maintained in the face of poor scientific knowledge—and say, "If we're not sure of the data, we should catch fewer fish to hedge against the possibility of overfishing."

Perhaps more fundamentally, disagreements can arise irrespective of scientific uncertainty because the two groups value fish for fundamentally different reasons. An ocean full of fish is of little use to a fisherman, unless they are available to be caught. By contrast, conservationists value fish as part of



Seth Atkinson, Liman Fellow 2010-11

the broader ocean ecosystem.

This difference in core values shows up in situations like rebuilding depleted stocks. The data tend to be good and uncertainty is reduced, but direct trade-offs must be addressed: do we catch fewer fish now, in order to rebuild the stock more quickly? Or do we catch slightly more now, and drag out the rebuilding process longer? Fishermen analyze the trade-off in terms of catch and revenue, and often conclude that it's worth dragging out the rebuilding process, if that means catching more fish in the short term. Conservationists note the biological risk created by keeping stocks at low levels, find concern in the potential trophic cascades

and other ecological impacts, and usually conclude that faster rebuilding is the better option, even if it means reduced catch in the short term.

So as a conservation advocate, how to approach these differences? A few thoughts follow from watching those who have more experience than I. First, make alliances when you can, using the shared goal of abundant fish in the ocean. Fighting against pollution creates common cause with almost all fishermen. Habitat degradation is a concern for some fishermen—primarily those who don't contribute to it by using bottom trawl gear—so ally with the ones on your side of the issue. Second, collaborate with fishermen when you can. Some situations present shared incentives, such as government and private permit banks for gear-switching. Conservation organizations such as The Nature Conservancy have used these opportunities to help fishermen develop and test cleaner fishing gear and switch to more ecologically-friendly fishing methods. And third, confront when you must. Sometimes the situation forces you to assert your values or be left behind, which is often the case with rebuilding decisions and annual catch limits.

The best fisheries advocates are ready to use all three types of engagement. I have watched my mentors at the Natural Resources Defense Council earn the respect of fishermen and managers via litigation. Through lawsuits, the NRDC has forced managers to adhere to the law, and pushed back effectively against the constant pressure from fishermen toward higher landings and revenues. But by cooperating when appropriate, the NRDC has also built relationships with potential allies, and shown adversaries that he responds when important issues are addressed. And finally, collaborative situations have earned admiration for the creativity brought to shared problem-solving. The goal, it seems to me, is to have people respect you both as an adversary and an ally. ♣

Governing the Police and Policing Reentry



Tracey Meares, Lisa Dugaard, Victor Bolden, Anita Marton, Fiona Doherty

Panelists examined how communities and governments are working—often in partnership—to address public safety. Front-end strategies include a public-private partnership to decrease gun violence in Chicago and a pilot program in Seattle to divert low-level drug suspects. After incarceration, communities such as New York and New Haven have begun to reexamine how better to re-integrate people leaving prison and returning home.

“In my view, laws don’t work that do not acknowledge the tremendous challenge of regulating public safety in an urban environment, that do not recognize that there are issues of gun violence, poverty, and racial disparity, that do not address the allocation of scarce resources and the complexity of the tactical decisions made by law enforcement. The essential question behind all of this is how to create community.”

– **Victor Bolden** is Chief Legal Advisor for the City of New Haven. From 2005–2009, Bolden served as General Counsel for the NAACP Legal Defense & Educational Fund, Inc. (LDF). He has taught at New York Law School and in South Africa and Brazil.

“The Chicago experiment is associated with a thirty-seven percent decline in homicides. Why? The idea is that people obey the law because either they think it’s the right thing to do or they feel obligated to conform to social dictates. So what you need to do with any kind of strategy is activate that natural instinct that people have by setting up a context where people are encouraged to think of law enforcement as a legitimate authority that ought to be obeyed.”

– **Tracey Meares** is Walton Hale Hamilton Professor of Law at Yale Law School. Meares has written on many aspects of criminal justice, including *The Legitimacy of Policing Among Young African-American Men*, 92 *Marq. L. Rev.* 651 (2009) and *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 *Ohio St. J. Crim. L.* 173 (2008) (with Jeffrey Fagan).

“Sometimes groups we were fighting on one issue were our allies on another issue, and often at the same time. While we were in New York working to amend our Rockefeller drug laws and running up against certain opponents who were very “law and order,” we were working on reentry issues with those same people, who believed you needed to be tough up front, but when people come out, you must give them opportunities to be productive citizens.”

– **Anita R. Marton** is Vice President of the Legal Action Center, a public interest law firm founded by Arthur Liman in 1979 to address issues concerning addiction, AIDS, and the criminal justice system. Since joining LAC in 1988, Marton has worked to minimize collateral consequences for people with criminal convictions and to reform sentencing laws for drug-related offenses.

“We are launching, in collaboration with the City of Seattle, a community-based diversion program for low-level drug offenders. It is a resource-rich strategy that does not use any of the apparatus of the criminal justice system. This is really a unilateral decision to lay down arms in the war on drugs. This is the essence of collaboration, but we did not start out that way. We started almost ten years ago by challenging racial profiling through selective enforcement claims. In settlement discussions in 2005, we started to ask: what else can we do?”

– **Lisa Dugaard** is Deputy Director of The Defender Association and supervises the Racial Disparity Project, which she launched as a Liman Fellow in 1998. Since 2001, the Project has focused on racial disparity in Seattle drug arrests, and since 2005, it has worked to develop a pre-arrest, community-based diversion model for low-level drug suspects.



Victor Bolden and Anita Marton

Finding Common Ground Among Communities and Police in Seattle

*Lisa Daugaard, Liman Fellow 1999–2000 and Deputy Director, The Defender Association
Anita Khandelwal, Soros Justice Fellow 2009, and Staff Attorney, The Defender Association*

Law Enforcement Assisted Diversion (LEAD) is the culmination of many years of work on changing drug law enforcement in Seattle. The Racial Disparity Project at The Defender Association has a long-standing commitment to reducing the harm caused by current drug policy to communities of color. And while our commitment to this goal is unwavering, our methodology has changed radically over time. From 2001–2008, we repeatedly sought to dismiss criminal cases on the grounds that police were far more likely to charge black defendants with drug-related crimes. We were successful on those motions and secured dismissal or reduced charges against all defendants. While the results of the litigation were favorable for individual clients, they did not result in any change in drug law enforcement.

Over the course of litigation, our adversaries at the Seattle Police Department asked us what we would have them do differently. While they disputed our allegations that their arrest practices were discriminatory, they agreed that exclusive reliance on the criminal justice system for dealing with individuals who are involved in the drug economy is ineffective; it neither helped those individuals nor had a positive impact on public safety.

The question of what we would do, posed by the police department, revealed a weakness in our work. The communities of color whose rights we sought to vindicate did not want de-policing or decriminalization of crack. They wanted better outcomes for their communities. Our vague ideas of doing buy-busts in white drug markets, which might result in more even enforcement across races, would not achieve this goal. The question also, however, revealed an area of common ground—a shared need for different drug law enforcement practices that would improve public safety and have better outcomes for individuals and communities of color.

Over the course of many meetings with local elected officials, law enforcement, prosecutors, defenders, and community members, we developed LEAD. LEAD is modeled on arrest-referral programs in Europe. LEAD allows officers in the field to divert eligible low-level drug users and sellers to community-based services in lieu of jail booking and prosecution. The officers follow clear guidelines to determine eligibility for diversion and, in most cases, must have probable cause to arrest before they may divert an individual. By engaging and assisting a significant proportion of offenders, LEAD reduces



Lisa Daugaard, Liman Fellow 1999–2000

the harm they inflict on the neighborhood and on themselves, and reserves valuable criminal justice system resources for other offenders who do not respond to the positive incentives and resources of the LEAD program.

LEAD's key components include peer outreach and counseling; individual intervention plans; intensive case management when appropriate; well-funded wrap around services (purchased on the private market where necessary to avoid waiting lists) including housing, treatment, education, job development and stipends, within a harm reduction framework. Isabel Bussarakum, Liman

Fellow 2011–12, is providing LEAD participants with legal services including educating participants about collateral consequences of convictions, assisting them with reinstating suspended drivers' licenses and applying for public benefits, and addressing outstanding warrants.

While the idea that individuals involved in the drug economy require access to resources and treatment is not new (indeed, drug courts across the nation are premised on this idea), LEAD devotes a substantial proportion of its resources to services for participants. Unlike drug court, LEAD does not require the presence of judges, court staff, prosecutors, or public defenders. The resources saved from keeping participants out of the criminal justice system are directed towards those individuals. Our hope is that upon rigorous evaluation after a two-year demonstration period, LEAD will provide a replicable model around Seattle and elsewhere. ♣



William Desmond, Liman Yale Summer Fellow 2011, worked at the Orleans Public Defender

Correcting Corrections: A Conversation



Back: Samuel Baganstos, Michael Lawlor, A.T. Wall; Front: Hon. Nancy Gertner, Sonia Kumar, Jamie Fellner, and Judith Resnik

As Congress has imposed limits on courts, efforts to redress prison conditions focus on a wider array of remedies. Panelists addressed consensus-building efforts, litigation, private and public actors, regulation of prison officials, and nonpartisan commissions.

“Our experience investigating the New York juvenile justice system has forced us to think very hard about how we do our work. Do the folks in these institutions need to be there? Juvenile justice facilities—like prisons and jails—are the mental health crisis system for many states. So we’ve begun to think about applying the interventions we use in mental health. Instead of focusing only on conditions at the facilities, we are asking whether people should be there in the first place.”

– **Samuel Baganstos** is Professor of Law at University of Michigan Law School. Baganstos writes and teaches about the constitutional and statutory law of civil rights. He is the author of *Law and the Contradictions of the Disability Rights Movement* (2009, Yale University Press). From 2009 to 2011, he was Deputy Assistant Attorney General for the U.S. Department of Justice, Civil Rights Division.

“It’s important to disaggregate people from systems. We’re talking about confronting other people, not just systems. I came in committed to understanding the operational culture of the Department of Juvenile Services so that we could collaborate. It makes a difference to understand the motivations of the other people at the table. The task as an advocate is to convince them to think of your client as their client.”

– **Sonia Kumar** directs the Juvenile Justice Initiative at the ACLU of Maryland, which she joined as a Liman Fellow in 2009–2011. Kumar, now holding a two-year Soros Justice Fellowship, works with incarcerated girls and other advocates to reduce gender disparities in juvenile justice services and programs in Maryland.

“Litigation is the backdrop for so many of the reforms we’ve been discussing. But I have seen prisoner conditions suits suddenly crumbling. I hope the federal court backstop

will be there when we need it. Too often, judges say, ‘my hands are tied.’ That trend suggests that if we are concerned about conditions of confinement, we should focus foremost on sentencing.”

– **The Honorable Nancy Gertner** served from 1994 through 2011 as a federal district judge in Boston. A recent appointee to Harvard Law School’s faculty, Judge Gertner co-taught courses on sentencing at Yale Law School. She is also the author of *In Defense of Women: Memoirs of an Unrepentant Advocate* (Beacon Press, 2011).

“Corrections people are caught between a rock and a hard place. Legislators keep sending them prisoners without the money to do their jobs effectively—which includes keeping prisoners safe. If you can’t afford to keep people safe, then you do need to decrease numbers so that you can keep them safe.”

– **Jamie Fellner** is Senior Counsel at the U.S. Program of Human Rights Watch, where she does research and advocacy on U.S. criminal justice issues and prison conditions. In 2004, Fellner was appointed as a commissioner on the National Prison Rape Elimination Commission.

“I am optimistic about the current potential for change. An extraordinary coalition has come together of social progressives and fiscal conservatives, and even corrections unions on some issues. From 1986 to 2008, we went from 6,000 to 19,900 inmates in Connecticut. We cannot afford to pay for this. We have explored ways to decrease the population. Today our prison population is dropping, mainly due to the success of risk reduction programs and a decreasing crime rate.”

– **Michael Lawlor** is Undersecretary for Criminal Justice Policy and Planning for the State of Connecticut. Lawlor served twelve terms as a member of the Connecticut House of Representatives and chaired its Judiciary Committee. He is on a leave of absence from the Henry C. Lee College of Criminal Justice and Forensic Sciences at the University of New Haven.

“The Council of State Governments agreed to look at our state’s corrections situation, but only if they had assurances from both houses of the legislature that they wanted to participate in the process. The Council offered evidence as to what was driving the problem. A coalition—which included the parole board chair, top legislators, the governor, and victims’ advocates—ultimately agreed on three recommendations. The result? Rhode Island’s prison population has seen the sharpest decline of any in the nation—a twenty percent decline since 2008.”

– **Ashbel T. “A.T.” Wall** is Director of the Rhode Island Department of Corrections, a position he has held since 2000. He is also the President of the Association of State Correctional Administrators. A graduate of Yale College and Yale Law School, Wall’s career in corrections began in 1976 as a line probation officer.

Shadow Prisons: Fighting for Basic Healthcare for Detained Immigrants in Texas

Adrienna Wong, Liman Fellow 2010–11, ACLU of Texas

I first met Graciela and Jesus Galindo in September 2010, when I started my Arthur Liman Public Interest Fellowship with the ACLU of Texas. Their son, Jesus Manuel Galindo, had died at the Reeves County Detention Center after suffering an epileptic seizure, unattended in an isolation cell. He was 32. An autopsy report found that he had sub-therapeutic levels of anti-seizure medication in his bloodstream at the time of his death. By the time prison officials found him, his body had gone into rigor mortis. For months, Galindo and his family had pleaded with prison officials to provide him with effective medication to control his repeated seizures and to move him out of isolation so he could be monitored by his fellow prisoners—all to no avail. The week of his death, Galindo wrote to his mother, Graciela: “I get sick here by being locked up all by myself. . . . They don’t even know and I am all bruised up . . . [T]he medical care in here is no good and I’m scared.”

The ACLU of Texas had been investigating the Reeves County Detention Center for months prior to the start of my fellowship. The focus was on numerous complaints regarding inadequate medical care. I participated in interviews with the Galindo family, sorted through documents, and pored over hundreds of pages relating to the complex contracting relationships that govern the operations of the Reeves County Detention Center.

In the course of our investigation, we learned the following: the Reeves County Detention Center is managed by private corporation GEO Group; its contract medical provider is Physicians Network Association (PNA), a private company specializing in “correctional health” that has a documented history of providing unconstitutional and inadequate care. Reeves houses only noncitizens serving federal sentences. Galindo was one of approximately 20,000 low-security immigrant prisoners detained in a number of private, segregated facilities the federal government refers to as Criminal Alien Requirement (CAR) prisons. Four other CAR prisons are located in remote parts of West Texas.

We filed a complaint on December 7, 2010 on behalf of Mr. Galindo’s family in the Western District of Texas. The lawsuit brings state tort and Eighth Amendment claims against Reeves

County and the private prison companies for the improper use of solitary confinement and the lack of adequate medical care. It also alleges that Bureau of Prisons (BOP) officials violated Mr. Galindo’s rights under the Eighth Amendment and acted with deliberate indifference in choosing to use private contractors that had documented histories of substandard medical care. As of October 2011, defendants have filed motions to dismiss parts of the complaint, and discovery is proceeding.

Individuals serving sentences for federal immigration crimes in prisons like Reeves constitute a uniquely disadvantaged

population. As prisoners in the criminal system, they are left out of advocacy efforts aimed at improving *civil* immigration detention conditions.

Immigration and Customs Enforcement’s proposed reforms for detention standards have no applicability to conditions for individuals held in BOP custody. At the same time, they are marginalized within the BOP system because of their immigration status. Incarcerated at private facilities rather than BOP-run prisons, they are extremely vulnerable to cost-cutting measures that compromise access to basic medical care and humane conditions.

Privatization makes it difficult for advocates and prisoners productively to engage with government administrators: to bring pressing concerns to their attention, to correct violations of BOP’s own regulations, or to discuss potential reforms. As a matter of policy, we allege that BOP does not include “contract facilities” within the agency’s centralized oversight mechanisms, and BOP denies prisoners held in private facilities opportunities for redress that would be available if they were confined in any BOP-operated facility.

The ACLU of Texas has attempted to engage government agencies in the task of conducting external oversight of these private prisons but has thus far been unsuccessful. In 2003, the Texas legislature passed a law that removed facilities like Reeves (county facilities operating under federal contracts) from oversight by the Texas Commission on Jail Standards. In 2009, the ACLU of Texas wrote a letter to the U.S. Department of Justice’s Office of the Inspector General (OIG) urging it to investigate conditions at Reeves. To date, the OIG has issued no response.♣



Adrienna Wong, Liman Fellow 2010–11

When Caged Birds Sing: Seeking Change in Maryland's Juvenile Justice System for Girls from the Inside Out

Sonia Kumar, Liman Fellow 2009–11, ACLU of Maryland

When I was in law school, I took a course entitled, simply, “The Civil Rights Movement.” It was taught by the legendary civil rights lawyer Florence Roisman, and the central question in the course was: how does social change happen? I wrote a lot of papers for that course, but I didn’t agonize over this question in a personal and gut-wrenching way until I came to the ACLU of Maryland as a Liman Fellow, two years ago, seeking to challenge the inequities faced by girls in Maryland’s juvenile justice system.

When I got here, I knew only that report after report documented the appalling conditions at the Waxter Detention Center, the state’s only all-girls detention center, yet little seemed to change. I soon realized that missing—but critical to any understanding of the overall picture—were the voices of the girls themselves. What change did they want to see? What were their own priorities? Fortunately, I was able to persuade the Department of Juvenile Services (DJS) that I should be permitted to conduct an advocacy workshop at Waxter.

I decided I wasn’t going to stand up in front of the girls and blather on; instead, I was going to hear what *they* felt were the pressing issues, and tutor them in how they could push for the changes they wanted to see. So, once a week over the course of several months, the girls and I met and talked. We prepared testimony about youth homelessness, wrote a letter to the editor, published in the *Baltimore Sun*, about the conditions at Waxter, and set up meetings with the Superintendent of the facility. The crowning achievement was a report, *Caged Birds Sing*, published in 2009, describing the girls’ experience in the juvenile justice system and making recommendations for reform. The report received great press—and set DJS scrambling to explain what it was going to do to improve.

We didn’t do anything that should have been a surprise at DJS headquarters—my proposal was clear that the girls would be writing testimony and letters to the newspaper. But DJS officials were surprised that we were doing something *real* and something that reached their “peers”—the press, legislators, and judges. They had never dreamed that these girls could wield political power or hold a mirror up to the adults making bad choices for young people. And, likewise, from the



Sonia Kumar, Liman Fellow 2009–11

girls’ perspective, it was unexpected that someone with political power might care what they think or say.

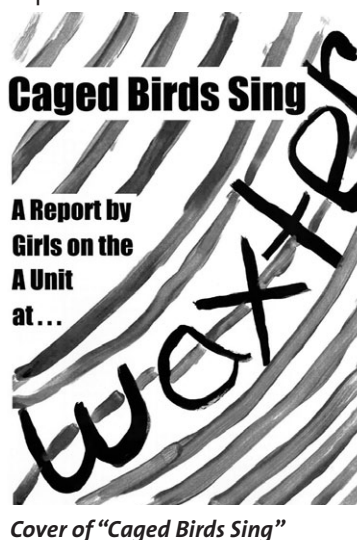
Since the report came out, DJS has said it will prioritize improving services for girls. In addition to more cosmetic changes to Waxter, they have hired more mental health staff and reconfigured the housing units. After many meetings, we got a familiar response when bureaucracies are confronted with publicly acknowledged failures: a task force and a report. But we also succeeded in persuading the legislature to enact a law requiring DJS to identify gaps in its services for girls. The Governor switched out DJS leadership, and

the new Secretary has, to his credit, undertaken a study of the girls’ population and opened certain alternatives to detention to girls for the first time, with plans of more to come.

These developments are not insignificant, but progress should not be measured solely by isolated changes in policy. Rather, an important measure is the degree to which the system has changed its response to girls and families who are juvenile-justice involved. Knowing the difference is hard, but I learned from the best teachers—the girls in my workshop. When I’d come back to them, sharing news about some legislator who was interested in reform, or how DJS was going to convene a task force, they’d look at me quizzically, waiting for the punch line. “So, Ms. Sonia, what does that really mean? What’s changed?”

My time here has persuaded me that nothing is as important as training young people from disempowered communities to own, cultivate, and harness their political power. That lesson did not mean sacrificing long-term goals but, rather, adapting to be responsive to the girls and families cycling through the system now.

Until DJS, judges, legislators, and advocates are compelled to engage with girls and families in a genuine way, until we see these girls as our own and these families as our peers, we will focus too much on writing our reports and too little on implementing them. That is why, as I reflect on the end of my Liman fellowship and the beginning of my work as a Soros Justice Fellow, I feel a renewed sense of urgency. My goal—as it always has been—is to put myself out of business. ♣



Cover of “Caged Birds Sing”

Forty Years After Attica, the Liman Program Looks Forward

Hope Metcalf, Director, Liman Program, Yale Law School; Judith Resnik, Arthur Liman Professor of Law, Yale Law School

The topic of prisons is one that was central to Arthur Liman, who served as Special Counsel to a Commission convened by New York State in the early 1970s to understand the causes of the uprising at Attica. The Commission's 1972 report opened: "Forty-three citizens of New York State died at Attica Correctional Facility between Sept. 9 and 13, 1971." Thirty-nine were killed on September 13, as the state police came to retake the prison in an assault that was one of the "bloodiest one-day encounters between Americans since the Civil War." The Commission issued a series of recommendations, including that "programs and policies associated with confinement should be directed at elevating and enhancing the dignity, worth, and self-confidence of the inmates, not at debasing and dehumanizing them."

The 2011 hunger strikes at Pelican Bay Prison in California by inmates protesting their long-term isolation and lack of mental health care are poignant reminders of how much remains unchanged. Yet there are signs that the debate is shifting, as the many costs of incarceration are prompting reassessment.

Over the past two years, the Liman Program has increased its efforts to find common ground for the reform of the criminal justice system. In the spring of 2010, the Liman Colloquium, *Imprisoned*, brought together more than 400 government officials, practitioners, Liman Fellows, students, and scholars to explore the issues raised by the incarceration of more than two million people in the United States.

That event prompted a series of new initiatives. With the support of Vital Projects Fund, we have been joined by a Senior Liman Fellow who co-teaches the weekly Liman Workshop and takes up special projects. Fiona Doherty (YLS 1999) served in that position before her recent appointment as Visiting Clinical Professor. She supervised a group of seven students who examined how state ethics regimes might be applied to address instances of documented prosecutorial misconduct. Those efforts are chronicled on page 16 by Isabel Bussarakum, Liman Fellow, 2011–12.

Fiona's successor, Sia Sanneh, Liman Fellow, 2007–08, is continuing that project in addition to several others. Sia is supervising students undertaking a survey of the regulation of long-term isolation in the fifty states and the federal prison system. Another project addresses the parental rights of incarcerated women in Connecticut. Students are producing a self-help manual that explains how the family law system works and current state policies.

Other Liman initiatives include surveying prison

visitation regulations and exploring ways to expand access to diapers for poor families. In the spring of 2011, Chesa Boudin (YLS 2011) and Trevor Stutz (YLS 2012) researched visitation rules to understand how the relationships between people in prison and those on the outside are regulated. Their essay on page 17 summarizes the findings.

Another initiative shifts the focus to poor families and their needs. Students are joining the effort to address the costs of diapers—\$1,100 per year for toddlers. Unaffordability can have wide-ranging effects, such as the inability to enroll a child in Head Start. With the Diaper Bank and Wiggin and Dana LLP, the Liman Program co-hosted a roundtable in April 2010 to help launch a national conversation regarding increasing access to diapers. The resulting coalition—The Diaper Difference—supports the efforts of Congresswoman Rosa DeLauro of Connecticut, who, on October 7, 2011, introduced the Diaper Investment and Aid to Promote Economic Recovery Act (DIAPER) Act to provide diapers to needy families through child care providers. Heather Cherry (YLS 2012), Matthew Smith (YLS 2012), and Tara Rice (YLS 2012) are now examining how state sales tax systems affect access to diapers.

This fall, the Liman Public Interest Workshop, *Abolition: Slavery, Supermax, and Social Movements*, is drawing on the rich literature on social movements in the context of efforts to end slavery, sex trafficking, torture, and the death penalty. Our special emphasis is on solitary confinement and how to "denormalize" supermax prisons. In the spring, in conjunction with the Fifteenth Annual Liman Colloquium, *Accessing Justice*, we will turn to the shortfalls facing state courts and litigants.

In addition, the Liman Program is collaborating with other institutions to co-sponsor two roundtables on related subjects. The first event, supported by the ABA Section of Litigation and also co-sponsored with John Jay College of Criminal Justice, is *Overcriminalization/ Excessive Punishment: Uncoupling Pipelines to Prison*. In December 2011, a small group of jurists, prosecutors, defense attorneys, prison officials, educators, scholars, and students will gather for a candid conversation about the daunting realities of the high rates of incarceration in the United States. A second event, to be held in April 2012 and co-sponsored by Columbia Law School, will explore the use of long-term isolation in U.S. prisons, the intended and actual effects of those practices, and alternatives to and constraints on "supermax." ♣

Raising the Bar for Prosecutorial Conduct

Isabel Bussarakum, Liman Fellow 2011–12, The Defender Association

The prosecutor's duty is not to win a case, but to see that justice is done. Unfortunately, prosecutors do not always live up to this duty. Common examples of misconduct include failing to disclose exculpatory evidence to the defense, tampering with or intimidating witnesses, and introducing unreliable evidence at trial. Along with ineffective assistance of counsel, prosecutorial misconduct has been a major contributor to wrongful convictions.



Tamar Lerer, YLS 2013, and Isabel Bussarakum

A recent Supreme Court case, *Connick v. Thompson*, 131 S.Ct. 1350 (2011), illustrates the impact of prosecutorial misconduct and the reluctance to hold prosecutors accountable. John Thompson spent fourteen years on Louisiana's death row before his murder conviction was overturned in 2002, after the Orleans Parish District Attorney's (DA's) Office conceded that prosecutors had violated their constitutional duty under *Brady v. Maryland*, 373 U.S. 83 (1963), to turn over exculpatory and material evidence to John Thompson's defense attorneys. Upon his release, Thompson sued the Orleans Parish DA's office under the Civil Rights Act, 42 U.S.C. § 1983. He argued that the *Brady* violation was caused by the office's deliberate indifference to its obligations to train prosecutors about their disclosure obligations. The jury found in Thompson's favor and awarded him \$14 million in damages. But in a 5-4 decision, the Supreme Court, in a majority opinion by Justice Thomas, overturned the jury's verdict. The Court held a single *Brady* violation was insufficient to show a failure to train. In her dissenting opinion, Justice Ginsburg reasoned that because "disregard of *Brady*'s disclosure requirements were pervasive in Orleans Parish," "the evidence . . . established persistent, deliberately indifferent conduct for which the District Attorney's Office bears responsibility." 131 S.Ct. at 1370.

The *Connick* majority emphasized that prosecutors are subject to accountability through professional discipline. In practice, however, state bar disciplinary systems have not been widely used to address prosecutorial misconduct. A 2010 report by the Northern California Innocence Project found that of 4,741 disciplinary actions against attorneys reported to the California State Bar Journal between 1997 and 2009, ten involved prosecutors.

Seven Yale Law students, working with Fiona Doherty, then-Liman Senior Fellow in Residence, and with David Menschel, Liman Fellow 2002, researched bar disciplinary procedures in

twenty-eight states. I joined Jane Cooper (YLS 2012), David Keenan (YLS 2013), David Lebowitz (YLS 2012), Tamar Lerer (YLS 2013), Ester Murdukhayeva (YLS 2012), and Emily Washington (Liman Fellow 2011-12). In addition to underreporting by judges and lawyers, other characteristics of states disciplinary systems hinder the use of grievance procedures as a method of addressing prosecutorial misconduct.

First, we researched whether jurisdictions had adopted ABA Model Rule 3.8, which provides special ethical duties for prosecutors. Significantly, California—the state with the largest bar association—has not adopted any version of Model Rule 3.8. Many other states have adopted weakened versions of Model Rule 3.8, and only a handful have explicit rules regarding the prosecutorial duty to disclose exculpatory evidence.

Second, complainants have little incentive to report prosecutorial misconduct because they do not stand to benefit directly from doing so. While state disciplinary systems can impose suspension or permanent disbarment of lawyers, those systems cannot reverse convictions, grant new trials, or award damages. Further, complainants do not necessarily have a right to participate in proceedings.

Third, some states impose additional barriers. Alabama requires that the grievant witnessed the misconduct, and Florida requires personal knowledge of the misconduct. Several states require grievances to be filed within a certain number of years from the date of violation. That requirement is likely to bar cases where misconduct was not discovered until years later, which is unfortunately a common occurrence.

Finally, much of the disciplinary process occurs outside of public view. Grievances are sealed unless a commission files formal charges or orders a public hearing. In many cases, disposition is confidential. This opacity renders disciplinary systems less effective at deterring unethical prosecutors by shielding them from the kind of public scrutiny that might discourage future misconduct, deter other prosecutors, or encourage others to file grievances.

Four Liman students have written a law review note examining the *Connick* case and the failure of disciplinary systems to provide accountability for prosecutors.¹ Meanwhile, the Liman Project will continue to explore how state disciplinary regimes may be used to raise the bar for prosecutorial ethics. ♣

¹ David Keenan, Deborah Jane Cooper, David Lebowitz & Tamar Lerer, *The Myth of Prosecutorial Accountability After Connick v. Thompson: Why Existing Professional Responsibility Measures Cannot Protect Against Prosecutorial Misconduct*, 121 YALE L. J. ONLINE 203 (2011).

State Prison Visitation Rules: Trends, Leaders, Laggards, and Outliers

By Chesa Boudin (YLS 2011) and Trevor Stutz (YLS 2012)

On any given day, more than 1.5 million children in the United States have a parent serving a sentence in a state or federal prison.¹ An estimated sixty-three percent of federal prisoners and fifty-two percent of state prisoners are parents of children. Given that it is well-documented that family stability is crucial to both child development and positive outcomes for people leaving prison,² it struck us as important to understand how state visitation policies affect those relationships.

Litigation to guarantee visitation rights for prisoners has proved difficult. With respect to all conditions challenges, the 1996 Prison Litigation Reform Act significantly curbed prisoners' access to federal courts and federal courts' ability to order relief for prisoners. In *Turner v. Safley*, 482 U.S. 78 (1987), the Supreme Court set out a four-part test for evaluating prisoners' challenges to restrictions on their civil liberties, including visitation. Under that test, most restrictions are deemed constitutional provided that they serve a "legitimate penological interest." In *Overton v. Bazzetta*, 539 U.S. 126 (2003), the Supreme Court applied the *Turner* test and unanimously upheld a Michigan Department of Corrections policy that permanently terminated visitation rights for some inmates.

As a Liman Project, we conducted a survey of prison visitation policies of the fifty states and the federal Bureau of Prisons ("BOP"). We embarked on the project with two primary goals. First, we wanted to generate data that allowed for relatively easy state-by-state comparison. Second, we hoped to identify trends, leaders, laggards, and outliers in the various visitation policies we tracked.

Our Liman Project explores the contours of how prison administrators use their discretion in prescribing visitation policies. Prisoners and their families' lives are deeply affected by these policies and to date there has been no comprehensive effort to compare these policies across all of the fifty states. We

were able to find publicly accessible regulations, codes, or rules for forty-three of the fifty states.

Our research yielded several general, overarching conclusions. First, visitation is treated as a privilege, not a right. Second, limits on that privilege are justified, at least partially, in terms of security, which may lead one to expect consistent policies across jurisdictions. But our research suggests that jurisdictions evaluate security in different ways in different contexts. Some jurisdictions make visitation extremely difficult, while other states encourage and promote visitation as a core part of the rehabilitation process. Third, no clear regional, geographic, or other trends appeared.

Several individual policies were noteworthy. For example, New York State maximum security prisons allow for up to six hours of visitation per day, 365 days a year with no limits to the number of visitors a given inmate can have on their approved visitors list. New York is also one of five states to allow overnight or conjugal visits. In contrast, Utah allows no more than two hours of visiting per visiting day, and prohibits any

language besides English from being spoken in the visiting room. Oklahoma prohibits married inmates from receiving visits from friends of the opposite gender. The Federal Bureau of Prisons prohibits visits from anyone the inmate did not know prior to incarceration. A final example: a new, technological-based form of visitation is emerging in the form of internet or virtual visitation, now available in some form in six states.

Our initial research report focused on some of these policies but there is much more work to be done and we are exploring next steps for further research. We have now gained the help of corrections administrators, and we are addressing gaps in the research so that we can make available our database to the public. We hope to publish our findings to prompt a broader discussion about how prison policies can help to support, not hinder, family relationships for people in prison. ♣



Hope Metcalf, Liman Director, and David Menschel, Liman Fellow 2002 and Vital Projects Fund

1 Lauren E. Glaze & and Laura M. Maruschak, Parents in Prison and Their Minor Children, Bureau of Justice Statistics (2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

2 Mindy Herman-Stahl, Marni L. Kan, and Tasseli McKay, RTI International Incarceration and the Family: A Review of Research and Promising Approaches for Serving Fathers and Families (2008), prepared for U.S. Department of Health and Human Services (HHS), <http://aspe.hhs.gov/hsp/08/MFS-IP/Incarceration&Family/index.shtml>.



2011–12 Liman Fellows Isabel Bussarakum and Elizabeth Compa



Emily Washington, Liman Fellow 2011–12; Ady Barkan, Liman Fellow, 2010–12; Benji Plener, Liman Fellow 2009–11



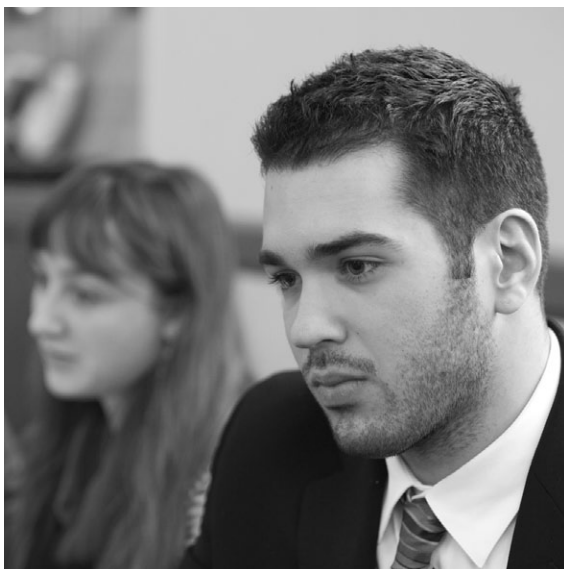
Princeton Summer Fellow Zayn Siddique and the Honorable Nancy Gertner



Ester Murdukhayeva, Liman Student Co-Director, 2011–12



Charissa Kiyo Smith, Liman Fellow 2007



Brown Summer Fellows Haley Kossek and Juan Martinez-Hill



2010–11 Liman Fellows: An Update

The 2010–11 Liman Fellows pursued access to justice for criminal defendants and immigrants, fair treatment of low-wage workers, effective services for poor families and people leaving prison, and preservation of our nation's fisheries. Project sites ranged from prisons in rural Texas to restaurants in New York. A unifying theme was the wide array of skills and strategies that fellows employed, such as coalition-building, media and public outreach, individual representation, impact litigation, institutional reform, and legislative advocacy.

Ady Barkan and Monica Bell each sought to address the needs of poor and working people. While at Make the Road New York, a community organization and workers' center, Ady collaborated with organizers and allies to enforce wage and hour laws on behalf of restaurant employees. In addition to fighting for unpaid wages on behalf of dozens of members, Ady assisted with a successful campaign to stiffen penalties for employers who withhold worker wages. In 2011–12, Ady is clerking for the Honorable Shira Scheindlin in the Southern District of New York.

Monica Bell joined the Legal Aid Society of the District of Columbia to devise structural responses to recurring issues. Monica worked with broad coalitions to develop standards for guardian ad litem and successfully opposed budget cuts to family support programs. Monica is now a doctoral candidate in sociology and social policy at Harvard University.

Other Liman Fellows worked on aspects of the criminal justice system. While at Neighborhood Legal Services Association in Pittsburgh, PA, Megan Quattlebaum helped to create a program that provides comprehensive civil legal services for formerly incarcerated individuals. In addition to representing dozens of individuals, Megan developed pro se materials and trained service providers on the many collateral consequences of incarceration. Sonia Kumar, a 2009–11 Liman Fellow, continued with Liman



The 2010–11 Liman Fellows: (back row, left to right) Ady Barkan, Seth Atkinson; (middle row, left to right) Lindsay Nash, Elizabeth Simpson, Monica Bell, Megan Quattlebaum; (front row, left to right) Sonia Kumar, Adrienna Wong (not pictured: Benji Plener)

fellowship support at the ACLU of Maryland and is now a Soros Justice Fellow. Thanks in part to Sonia's work, girls in Baltimore can now participate in programs that enable them to continue living at home. Benji Plener, also a 2009–11 Liman Fellow, continued at the Special Litigation Department at the Orleans Public Defenders (OPD). Benji helped OPD to develop better services for pre-trial detainees; that project will carry on with support of the Vital Projects Fund.

The treatment of non-citizens in and out of detention was the primary focus for Elizabeth Guild Simpson, Lindsay Nash, and Adrienna Wong. Elizabeth spent the year at Southern Coalition for Social Justice in Durham, North Carolina, where she represented individuals facing removal as a result of discriminatory enforcement practices. Elizabeth continues to practice public interest law in North Carolina at Prison Legal Services. Lindsay worked with the Cardozo Immigrant Rights' Clinic in New York City to address the legal needs of individuals facing deportation because of prior criminal convictions. In addition to assisting with a needs assessment study for indigent deportation defense in New

York City, Lindsay represented petitioners seeking pardons from the newly formed New York Special Immigration Board of Pardons, which considers pardoning criminal convictions for immigrants facing deportation. While at the ACLU of Texas, Adrienna litigated conditions of confinement for immigrants incarcerated for federal crimes in remote private prisons such as the Reeves County Detention Center near Pecos, Texas. Both Lindsay and Adrienna are doing clerkships—Lindsay for Judge Robert Katzmman of the Second Circuit and Adrienna for Judge A. Wallace Tashima of the Ninth Circuit.

Seth Atkinson worked at the Natural Resources Defense Council (NRDC). One focus was the National Oceanic Committee (NOC), an interagency body formed by executive order in July 2010 to address overfishing and pollution in U.S. waters; Seth developed proposals and worked collaboratively with a number of other organizations to urge the NOC to adopt strong policies. Seth also assisted in bringing litigation to enforce the 2006 amendments to the Magnuson-Stevens Act, which mandates an end to overfishing. Seth is continuing this work as a staff attorney at NRDC's San Francisco office. ♣

Transitions: Liman Program Welcomes Sia Sanneh as Liman Senior Fellow in Residence and Congratulates Fiona Doherty

Fiona Doherty, who was the inaugural Senior Liman Fellow in Residence, has been appointed as Visiting Clinical Professor at Yale Law School in 2011-2012. The Senior Liman Fellow in Residence, a position made possible by the support of the Vital Projects Fund, provides guidance, advice, and support to current and past Liman Fellows and helps to shape the Program's intergenerational projects. Fiona, a former federal defender, is teaching the Criminal Defense Project and is co-teaching the Veterans' Benefits Clinic with Michael Wishnie.

Sia Sanneh, who graduated Yale Law School in 2007, began as Senior Liman Fellow in Residence in September 2011. Sia is co-teaching the Liman Workshop and working with students on several Liman Projects, including examining the development of "supermax" facilities designed to house detainees in indefinite solitary confinement, evaluating how state ethics regimes could



Sia Sanneh and Fiona Doherty

address prosecutorial misconduct, and exploring programs to assist women in prison. Sia graduated magna cum laude from Columbia University in 2001 and from Yale Law School in 2007. She received an M.A. from Columbia Teachers College in 2003 and, from 2001 to 2004, taught middle school in Washington Heights, New York. In 2007-2008, Sia was a Liman Fellow at the Legal Action Center, which Arthur Liman founded. There, Sia researched how New York City secondary schools used criminal sanctions when

dealing with disciplinary problems. Sia sought ways for students, arrested as a result of school-related incidents, to return to their schools and communities. In 2008, Sia became an attorney with the Equal Justice Initiative (EJI) in Montgomery, Alabama. At EJI, she represented defendants facing the death penalty and/or life without parole. In addition, Sia drafted legislation to reform parole violation laws in Alabama by limiting the amount of time a person could be incarcerated for technical violations.

Introducing the 2011-2012 Liman Law Fellows

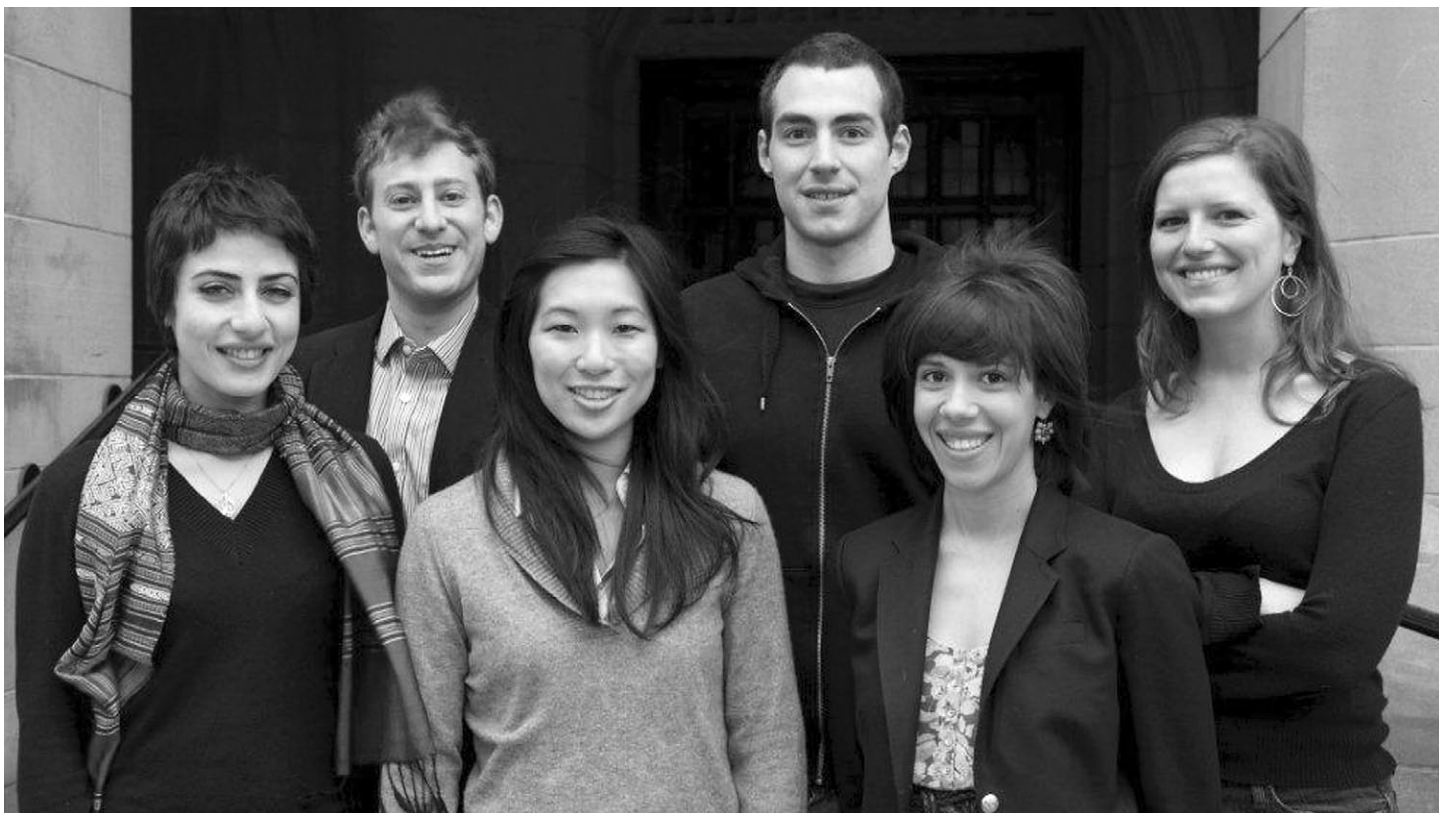
The Arthur Liman Public Interest Program awarded seven Liman Fellowships for 2011-12. The fellows are providing legal services at national and local organizations in New Orleans, Louisiana; New York, New York; and Seattle, Washington. Their projects relate to police misconduct, mental health, poverty, prison system management, and the use of scientific evidence in criminal proceedings.

Robert Braun, a member of the Yale Law School class of 2011, is spending his fellowship year at Southeast Louisiana Legal Services where he is representing low-income renters. Robby's project addresses how federal protections protect residents of public housing from wrongful evictions and what kinds of affirmative avenues for redress exist if landlords illegally target particular populations for eviction. Before coming to Yale Law School, Robby graduated summa cum laude from Princeton University and served as a Lecturer at the China Foreign Affairs University in Beijing.

Isabel Bussarakum is working with The Defender Association in Seattle, Washington to provide legal services to people participating in a pilot drug diversion program that permits low-level drug offenders to receive treatment and services in lieu of criminal charges and possible prison sentences. Isabel's work explores how to correct errors in the criminal records of participants and whether some are eligible for social welfare and other benefits programs. A member of the Yale Law School class of 2011, Isabel graduated summa cum laude from Columbia University and worked at

a Washington D.C.-based nonprofit civil rights organization, Equal Rights Center, that addresses discrimination on the basis of race, gender, sexual orientation, national origin, or disability.

Elizabeth Compa has joined the Southern Center for Human Rights to work on the effects of for-profit companies on Georgia's criminal justice and prison systems. Elizabeth is investigating how funds are allocated, the profits garnered, and the incentives created when probation is supervised by private sector companies and what kinds of



The 2011–12 Liman Fellows (Back Row from Left: Robert Braun, Seth Wayne, Elizabeth Compa; Front Row from Left: Diala Shamas, Isabel Bussarakum, Emily Washington; not pictured: Daniel Mullkoff)

interventions could ameliorate the provision of services. Elizabeth, a member of the Yale Law School class of 2011, graduated magna cum laude from New York University. Prior to law school, she was a curatorial assistant at the Museum of the City of New York.

Daniel Mullkoff is spending his fellowship year at New York Civil Liberties Union, where he will work on understanding the impact of the New York Police Department's "stop-and-frisk" practices. He is providing direct representation for individuals alleging police misconduct as well as doing research on reform of the underlying practices, such as how the Citizens Complaint Review Board could be an effective tool for oversight. Dan, a 2010 graduate of Yale Law School, clerked for the Honorable Keith P. Ellison of the Southern District of Texas. He graduated with high distinction from the University of Michigan, after which he worked on a farm in Costa Rica and in Portland, Oregon at AFS Intercultural Programs, an

organization that provides opportunities for young people to live abroad as volunteers.

Diala Shamas has joined Creating Law Enforcement Accountability and Responsibility (CLEAR), a project based at CUNY School of Law. Diala is serving members of Arab, Muslim, Middle Eastern, and South Asian communities as they interact with law enforcement. Diala is developing educational programs, investigating and documenting experiences of individuals, and representing individuals alleging mistreatment. A graduate of Yale College and a member of the Yale Law School class of 2011, Diala worked prior to law school with B'Tselem, an Israeli human rights organization.

Emily Washington, a member of the Yale Law School class of 2011, is at Louisiana Capital Assistance Center where she focuses on how scientific evidence is used in criminal proceedings in Louisiana. Emily

is investigating the current methods used by state forensic laboratories, challenging the misuse of forensic evidence in capital trials, and cooperating with scientists and lawyers to develop standards for reform. Emily earned an A.B. in Biology and International Relations from Brown University and worked as an environmental analyst on government projects for two years prior to law school.

Seth Wayne is at the Orleans Public Defenders (OPD), which is establishing a mental health unit. Seth is representing people with mental health and developmental problems who are facing criminal charges or who are incarcerated. In addition to providing legal services for individuals in competency hearings—which decide whether a person is capable of standing trial for crimes—Seth is exploring the conditions of confinement and treatment of those detained. A member of the Yale Law School class of 2011, he is a native of Toronto, Canada and graduated with high distinction from the University of Toronto. ♣

2011 Liman Summer Fellows

In conjunction with other schools, the Liman Program helps support public interest work by students at Barnard, Brown, Harvard, Princeton, Spelman, and Yale. The 2011 Summer Fellows worked on a range of issues such as immigrants' rights, workplace injustice, indigent criminal defense, the death penalty, and community health.



Barnard Summer Fellows (From Left: Eva Vaillancourt, Mitzi Steiner, Stephanie Shih)

Barnard College

Stephanie Shih '12, Vera Institute for Justice, New York, NY
Mitzi Steiner '12, Human Rights Watch, New York, NY
Eva Vaillancourt '12, NYCLU, New York, NY
Faculty advisor: Christina Kuan Tsu, Associate Dean of Studies



Yale Summer Fellows (Back Row From Left: Aaron Podolny, Alexandra Brodsky, William Desmond; Front Row from Left: Ela Naegel, Katherine Haas, Emma Sokoloff-Rubin, Amalia Skilton)

Yale College

Alexandra Brodsky '12, Justice Now, Oakland, CA
William Desmond '12, Orleans Public Defender, New Orleans, LA
Katherine Haas '12, Make the Road, New York, NY
Ela Naegel '12, Public Counsel, Los Angeles, CA
Aaron Podolny '12, Queens Legal Services, Foreclosure Prevention Project, NY
Amalia Skilton '13, ACLU of Arizona, Phoenix, AZ
Emma Sokoloff-Rubin '11, Texas Rio Grande Legal Aid, Weslaco, TX
Faculty advisor: Richard Schottenfeld, Master, Davenport College, and Professor of Psychiatry, Yale Medical School



Harvard Summer Fellows (Back Row from Left: former Advisor Hamida Owusu, Tsering Jan Van der Kuijp, Olivia Clements; Front Row from Left: Min Yu, Alexander Guзов, former Advisor Jenny Lee)

Harvard College

Olivia Clements '12, Public Counsel, Los Angeles, CA
Alexander Guзов '13, Public Defender Service for the District of Columbia, Washington, DC
Tsering Jan Van der Kuijp '12, U.S. DOJ, Environment and Natural Resource Division, Washington, DC
Kristy Luk '12, State Bar of CA and CA Department of Education, Sacramento, CA
Min Yu '13, Public Defender Service for the District of Columbia, Washington, DC
Faculty advisor: Katie D. Koski, Interim Assistant Director, Center for Public Interest Careers and Public Service Network



Brown Summer Fellows (From Left: Katherine Blessing, Haley Kossek, Juan Martinez-Hill, Amy Traver)

Brown University

Katherine Blessing '13, Community Legal Resources, Detroit, MI
Haley Kossek '13, ARISE Chicago, IL
Juan Martinez-Hill '12, NYCLU, New York, NY
Alexander Tabloff '12, Capital Appeals Project, New Orleans, LA
Amy Traver '12, Rhode Island Health Center Association, Providence
Faculty advisor: Linda Dunleavy, Associate Dean of the College



Princeton Summer Fellows (Back Row from Left: Eric Stern, Laura Pedersen; Front Row from Left: Vinay Sitapati, Justin Simeone, Zayn Siddique)

Princeton University

Krisia Ildefonso '12, Legal Services of New Jersey, Workers' Legal Rights and Farmworker Projects, Edison, NJ
Laura Pedersen '12, DOJ Office of Immigration Litigation, Washington, DC
Zayn Siddique '11, Red Hook Community Justice Center, Brooklyn, NY
Justin Simeone, 2nd Year PhD in Politics, Center for Human Rights and Global Justice, NYU School of Law, NY
Vinay Sitapati, 1st Year PhD in Politics, Centre for Policy Research, New Delhi
Eric Stern '11, New York City Council, Office of Council Member Brad Lander
Faculty advisors: Leslie Gerwin, Associate Director, Program in Law and Public Affairs
Kim Lane Scheppele, Laurance S. Rockefeller Professor of Public Affairs and Director of Program in Law and Public Affairs, Woodrow Wilson School, Princeton University



Spelman Summer Fellows (From Left: Taylor Allen and Shana Childs)

Spelman College

Taylor Allen '12, Urban Justice Center, New York, NY
Shana Childs '12, Urban Justice Center, New York, NY
Faculty advisor: Dr. DeKimberlen Neely, Interim Associate Dean

Liman Law and Summer Fellows



Some of the Liman Law and Summer Fellows

Please join us at the Fifteenth Annual Arthur Liman Colloquium

Accessing Justice

March 1 – 2, 2012 • Yale Law School

Most state constitutions guarantee “open courts” and rights to remedies. Further, in 1963, *Gideon v. Wainwright* established a constitutional right to counsel for indigent defendants facing felony charges. Implementation of these rights, however, remains elusive. A 2004 report on criminal counsel by the American Bar Association’s Standing Committee on Legal Aid & Indigent Defendants reached “the disturbing conclusion that thousands of persons are processed through America’s courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation.” On the civil side, California counted 4.3 million civil litigants without lawyers in its courts in 2009; New York tallied more than 2 million in 2010, and that number includes almost all facing evictions and 95 percent of those in family conflicts.

For its fifteenth anniversary, the Liman Colloquium will take up an overarching question for the 21st century: how can courts respond to the demand for their services? The issues include providing adequate representation to criminal defendants, the right to “civil *Gideon*” for people unable to afford lawyers, and what role, if any, alternative processes and new kinds of courts may play in addressing these challenges. Joining the Colloquium will be current and former chief justices from several states as well as scholars, students, practitioners, and many of our Liman Fellows.

For updates on the conference, please visit www.law.yale.edu/liman or contact Hope Metcalf at hope.metcalf@yale.edu or 203.432.9404



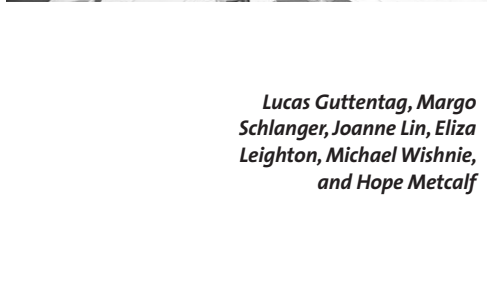
Judith Resnik addresses Fourteenth Annual Liman Colloquium, alongside Ashbell T. Wall, Rhode Island Commissioner of Corrections, and Michael Lawlor, Undersecretary for Criminal Justice Policy and Planning for the State of Connecticut



Audience members included: (bottom row, left to right): Vivien Blackford, Coalition for Criminal Justice Reform; Albert Monroe, YLS 2012 and Liman Student Board; Tamar Lerer, YLS 2013 and Liman Student Board; Sarah Russell, Quinnipiac Law School and former Director of the Liman Program; Paul Thomas, Connecticut Federal Defender; (top row, left to right): Tom Ullmann, Connecticut Public Defender; audience member; and Mike Thompson, Associate Dean, Yale Law School



*Samuel Baganstos,
Hon. Nancy Gertner,
Michael Lawlor, A.T.
Wall, Sonia Kumar,
Jamie Fellner, and
Judith Resnik*



*Lucas Guttentag, Margo
Schlanger, Joanne Lin, Eliza
Leighton, Michael Wishnie,
and Hope Metcalf*



*Tracey Meares, Lisa Dugaard,
Victor Bolden, Anita Marton,
and Fiona Doherty*



Jeffrey Robinson and Elizabeth Esty



Samuel Baganstos, Hon. Nancy Gertner, and Sonia Kumar

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Judith Resnik

Arthur Liman Professor of Law and Founding Director

Sia Sanneh

Liman Senior Fellow in Residence

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

There, you can learn more about the Liman Fellows, read reports by the Fellows about their work, 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 Hope Metcalf. For information about hosting a Liman Summer Fellow or applying for a Liman Summer Fellowship, please contact Hope Metcalf or one of the Liman Faculty Advisors at the coordinating schools listed on this page.



Lisa Dagaard, Liman Fellow (1998–99), with her daughter, Lucy Broberg



Emma Sokoloff-Rubin, Yale Liman Summer Fellow, embraces Mitzi Steiner, Barnard Liman Summer Fellow

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Christina Kuan Tsu

Associate Dean of Studies

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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*
- Other named underwriting opportunities are available and any amount towards the above or for general support is helpful.

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☐ Please contact me with information about making a gift to the Liman Program in my will, other planned giving options, or gifts of securities or other assets.

* **Summer Program Support.** Liman programs now exist at six universities (Barnard, Brown, Harvard, Princeton, Spelman, and Yale) and provide stipends for summer fellows. Contributions to supplement existing programs at participating institutions may be designated for the Liman Summer Fellowship Program and donated directly to those schools (see contact listing on page 26), perhaps as an alumni gift. In addition, a new summer fellowship program can be created at another university. Contact the Liman Program Director to help coordinate these donations.

Please make your charitable donation payable to the Arthur Liman Public Interest Program at Yale Law School, which is a 501(c)(3).

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