



ARTHUR LIMAN PROGRAM

Public Interest Newsletter

Educational Advocacy: Reflections by 2004-05 Liman Fellow Cyd Fremmer

Cyd Fremmer spent her fellowship year advocating for Boston youth in need of special education services. We asked her to reflect on her year, to describe some of her experiences in detail, and to note how she might have changed her fellowship in hindsight. We have posted final reports from our four other 2004-05 Liman Fellows on our website (www.law.yale.edu/liman) and we hope you'll visit the site to read those reports.

I began my fellowship with The EdLaw Project in September 2004 with a plan that sought to bridge the gap between criminal representation, educational advocacy, and social services for Latino youth in Boston. The EdLaw Project, which was founded in 2000, was born from the awareness that an astounding proportion of youth involved in the juvenile justice system have educational needs that go unmet, and that continued failure to meet these needs perpetuates disenfranchisement, poverty, and a

cycle of incarceration, release, and re-incarceration. The three EdLaw staff attorneys provide direct representation in school discipline and special education proceedings for individual clients, many of whom are referred to the Project by the juvenile public defender of Massachusetts. My project, in its original formulation, sought to expand EdLaw's reach in three ways: (1) by providing direct representation to Latino students in particular (a third of whom, in Boston, drop out of high school); (2) by training staff of carefully chosen social services organizations in how to interpret school

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A2K: Access to Knowledge



During the Fall semester, Deborah Cantrell of the Liman Program and Eddan Katz of the Law School's Information Society Project taught a weekly seminar "A2K: Access to Knowledge." The seminar took its name from an international effort to draft a treaty (the "A2K" treaty), whose goals include enabling all individuals to have access to fundamental sources of knowledge through education, through civic and cultural engagement and by ensuring that domestic and international intellectual property law recognize the need for common ownership of knowledge in addition to private ownership of knowledge. The seminar's own goals were to deepen an

understanding of the essential role of knowledge in developing and developed countries and to examine how national laws and international human rights norms currently protect (or impede) the right to access knowledge. Through readings and discussions participants attempted to articulate better ways to protect access to knowledge using domestic statutory law, international law, social norms and activism, and technology. The weekly topics included:

- Sept. 12th Introduction: Knowledge as Enlightenment & Development
Sept. 19th Why Knowledge Matters
Sept. 26th Knowledge as a Social Movement
Oct. 10th Knowledge as a Human Right
Oct. 17th Knowledge as Human Development
Oct. 31st Technology & the Politics of Knowledge
Nov. 7th A2K Treaty
Nov. 21st Knowledge, Social Status & Social Connectivity
Nov. 28th Knowledge & Access to Justice
Dec. 5th Indigenous Knowledge & Native Culture
Dec. 12th Knowledge & Health
Dec. 19th Knowledge & Media

The Arthur Liman Public Interest Program Newsletter is published by:

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Educational Advocacy

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issues (e.g. to consider whether a child's disruptive behavior stems from academic frustration and might be better addressed by additional academic supports than by repeated suspensions) and in the rights of students; and (3) by training Spanish-speaking parents in their rights and the rights of their children and working with them in partnership in an effort to empower them to speak on behalf of themselves and their children.

The first six months of my project were spent largely on individual representation as I learned the intricacies of the Individuals with Disabilities in Education Act (IDEA) and the personalities and convolutions of the Boston Public Schools. In the second six months, I continued direct representation but also sought to expand my collaboration with and training of parents and staff of social services organizations. I worked closely with several such organizations that focus on assisting Latino families, including City Life/Vida Urbana and JPOPOP, and also formed a relationship with the Arts Incentive Program, a non-profit organization which provides arts programming and case management to at-risk females.

In a shift from my original plan, I spent significant time working with and training mental health providers. These relationships arose most frequently from my individual representation of a client. Many of my clients were seeing psychologists, psychiatrists, and clinical social workers, and it was my regular practice to make contact with these providers in order to obtain a better understanding of my client's needs. These professionals tended to be thoughtful, caring, and generous with their time, and yet to know surprisingly little about the realities of special education, the rights of students, and the important role which they could play. Many of them were unaware, for example, that schools may *not* mandate that students take medication and may *not* exclude them

for the failure to do so – which many schools in Boston frequently attempt to do. Had they known that, they could at least have counseled their clients appropriately when faced with such a situation. Similarly, because of a lack of knowledge of the system, many of them were unable to gauge whether the services being provided by the Boston Public Schools were or were not in keeping with their professional recommendations, and were likewise unaware of the weight their recommendations could carry in a school-based meeting or administrative hearing.

What began as a discussion about a single shared client frequently led to more far-reaching discussions about education in general and ultimately trainings, sometimes for two or three practitioners at a time, sometimes for the entire staff at once. I came to work with and train individuals and groups of individuals at Massachusetts General Hospital, Children's Hospital, Boston Medical Center, The Martha Eliot Health Center, The South End Community Health Center, Southern Jamaica Plain Health Center, and the Home for Little Wanderers, among others. (These individuals, especially those at the health centers, tended to serve the same population on which I was focused: the Latino youth of Boston, which made sense, given that our relationship arose out of our client overlap.) In certain ways, the training of and collaboration with mental health professionals may have yielded greater benefits than working with social services organizations, as social services organizations often receive contracts from the Department of Social Services to work with families for a limited period of time (usually three months), whereas the insurance that pays for mental health services is generally more generous, and the mental health provider's relationship with his/her patient is much more likely to extend over a period of years. Another hoped-for benefit of developing these relationships did materialize: many cross-referrals were made between the mental-health professionals and EdLaw.

The two issues that most crystallized

for me in the last six months of my fellowship, however, and stand out starkly for me as problems desperately in need of redress, arose out of my individual representation of clients. The first is the failure of Boston Public Schools to provide adequate – or *any* – transitional planning for its older special education students; the second is the absolute opacity of Boston Public Schools, which alienates parents and students, leads to unfair treatment for which there seems to be no remedy, and which I was never able to penetrate successfully.

The lack of transitional planning became evident to me in the course of my representation of two students in particular: J.R. and M.V. J.R. was a sixteen-year-old student, in ninth grade for the third time, who had a diagnosis of Fetal Alcohol Syndrome and related mild mental retardation. Though he struggled with abstract concepts – algebra, a graduation requirement, was particularly difficult – his social skills were adequate and his daily living skills were normal. The administrators in Boston Public Schools, recognizing that meeting graduation requirements was going to be very difficult for J.R., wanted to place him in a vocational program – not necessarily a bad plan, but for the fact that their only vocational programming was for the *severely* handicapped, and taught skills such as separating recycling and identifying salt from sugar. M.V. was an eighteen-year-old junior of average intelligence but suffering from severe dyslexia; at 18 and in 11th grade, on his way to graduate more-or-less on time, he was functionally illiterate. The administrators claimed that the services M.V. was currently receiving were perfectly appropriate, and cited as proof the fact that M.V. had passed the MCAS (the standardized test which Massachusetts students must pass to graduate from high school), ignoring the fact that M.V. had taken this exam with the help of a reader and a scribe. Though their disabilities were very different, J.R. and M.V.'s situations were similar in that both were facing life after high

school without having received the skills necessary to survive independently in the work force. Although IDEA mandates transitional planning precisely to address situations such as these, neither student had such a plan, and the immediate situation of each was so dire that the focus of our litigation and mediation was on the school year to come, though we were not unaware of the need for long-term planning.

The second issue was exemplified by the experience of B.G., whose relationship with the public school system was an unmitigated nightmare. B.G. was a student who came to Boston from Puerto Rico in eighth grade, never received appropriate bilingual supports, and whose severe language-based learning disability was not properly diagnosed until the end of his second year in ninth grade. In the interim, he was harassed repeatedly by one particular teacher, who falsely accused him of armed robbery (a magistrate judge refused to allow the complaint to go forward), and the principal of his high school, to a point where his family agreed, under pressure from Boston Public Schools, to receive home tutoring (three times a week for an hour and a half each time) in lieu of a regular education for the spring semester of 2005. Though B.G. had failed nearly all of his classes, he thrived under the tutor's care.

For most of the spring, I sought to discover whether it would still be possible for B.G. to be promoted to tenth grade if he did well with the tutor. I could not get an answer nor an explanation of the standard a student must meet to be promoted. In June, the tutor administered final exams written by the teachers at B.G.'s former high school. Although she said he had done well, I was then informed by the principal that B.G. had been deemed to have cheated, had accordingly been failed, and would not be promoted.

There was no explanation of why he was thought to have cheated. There was no explanation of how his grades had been calculated and how or whether grades from the tutor had been factored into the

end-of-year final grade. I could not get a copy of any teacher's grade book from the fall or of the graded exams. We considered seeking these documents through a preliminary injunction or temporary restraining order but had no cause of action (the Family Educational Rights and Privacy Act has no private cause of action). We could find no way to litigate under IDEA. We considered going to the press, but B.G. and his sister had several more years in the Boston public school system and we feared repercussions.

I contacted every special education administrator involved in the case, the high school principal, several deputy superintendents, the school system's attorney, the ombudsperson, and the superintendent himself. Almost no one returned my calls, emails, faxes. Those who did promised to investigate and then did nothing. We wanted to know a very simple fact: how had B.G.'s grades been calculated? There was no reason I could fathom why this could not have been explained to us through use of a spreadsheet and a calculator. A simple request, and I could find no way – legal or otherwise – to get an answer.

In hindsight, I believe I was able to meet some of the goals of my projects and not others. I did expand EdLaw's direct representation to Spanish-speaking families, a group that had been previously unserved (though greatly in need of services), and was able to serve as a liaison with a number of social services and mental health organizations, forging relationships between these groups and The EdLaw Project that I believe will be ongoing. My original plan had been to work primarily with a particular community-based multi-service agency that had been serving the Spanish-speaking low-income population of Boston for the last thirty years, but, just as I joined The EdLaw Project, the agency suffered a dramatic cut in its federal funding and had to eliminate half its programming and dismiss half its staff. Its family support services were drastically reduced. Its reorganization caused severe internal disruption, and we were not able

to formalize a collaboration as initially conceived.

However, I believe I adjusted relatively well in light of these external events, finding other organizations who served the same population with which to work, and taking advantage of unthought-of opportunities as they arose, such as the potential in working closely with mental health providers. Also, there were flaws in my original plan; for example, I was not aware of the time-limited nature of most services provided by agencies like the one with which I had hoped to collaborate, nor was I aware of the extremely high rate of turnover at organizations such as those. One of the biggest problems in working with other agencies, and one for which I never found a solution, was how to prevent the collaboration from being merely a personal relationship between two individuals, one at each agency, which would simply collapse when one or both of the two departed.

The component of my project in which I feel I made the least headway was the third: mobilizing parents in the Latino community, or mobilizing parents in Boston in general. It became clear to me early on that in order to be mobilized, parents, like anyone else, need a unifying catalyst. While education of their children is always among the priorities, something is needed to move it to the top of the list. An expulsion hearing or special education proceeding can move education to the list for an individual parent but doesn't have a unifying effect, and too often the parent is (rightfully) focused on the individual outcome to the detriment of larger structural goals.

In my time with EdLaw, there did seem to be two opportunities in particular to mobilize a parent base to advocate for greater change, and both centered around the conduct of principals, one of a middle school and one of a high school. Both principals committed numerous and egregious due process violations; we had numerous clients from both of these schools whose parents were fed up and who told us other parents were fed up as well. In one of these schools, I had also

worked productively with several teachers on an individual case and believed that they would likewise be interested in preventing the principal from making such unfettered use of his discretion. I thought it would be highly effective to create a partnership between the parents and teachers, and it seemed possible. But my case load made it impossible for me to devote the time or resources needed to make this happen and I do view it as an

opportunity lost.

With this in mind, and with the benefit of hindsight, had I the opportunity to do this fellowship over again, I would make it a point to allocate my time more strictly between individual representation and the community outreach and social services organization training. While I think it made sense to focus my time on direct representation in the first six months, I believe at that point I should

have been stricter about restricting or reducing my caseload and in placing aside a certain number of hours each week to work on the larger picture. This would have allowed me the opportunity to take advantage of what I had learned in the first six months about the most pressing problems in our education system in such a way as to (perhaps) do more to try to alleviate them, even if this meant only laying a framework.

Intersections of Criminal and Immigration Law: Reflections by 2005–06 Liman Fellow Jorge Baron

One of our current Fellows, Jorge Baron, is spending his year at the New Haven Legal Assistance Association. We asked him to write in-depth about his work thus far. In upcoming newsletters, we will feature similar reports from others of the 2005–06 Liman Fellows.

Jorge writes:

Consider the following situation:

John is a 36-year-old legal permanent resident of the U.S. John is married and has two young children, and both his wife and his children are U.S. citizens. John came to this country when he was two years old, but he had not thought that he needed to naturalize. A few years ago, John was charged with a misdemeanor – attempted larceny – for trying to shoplift a video camera from an electronics store. John’s defense attorney arranged for a plea deal in which John pled to the charge in exchange for a suspended one-year sentence. This meant that John never had to serve any jail time as a result of the offense.

A few years later, John decided to apply for citizenship. After filing his application, John was detained by officials of the Department of Homeland Security (DHS), who informed him that his attempted larceny conviction was considered an “aggravated felony” for purposes of immigration law. John was placed in detention but was able to contact an immigration attorney. The attorney informed him that his misdemeanor conviction was indeed an aggravated felony, that federal law required that he be detained as long as it took for his deportation proceedings to be

completed, and that there was virtually no way to prevent deportation. The attorney also informed John that his conviction will prevent him from ever returning to the United States (even to visit his family) unless he obtains a special waiver from the U.S. Attorney General, and that if he returns to the U.S. illegally, he will face federal prosecution and up to twenty years in federal prison.

Earlier this summer, I began serving as an Arthur Liman Public Interest Fellow at the New Haven Legal Assistance Association in New Haven, Connecticut. One of the main projects I am pursuing during my fellowship year is an effort to educate criminal defense attorneys in Connecticut on the immigration consequences of criminal convictions. Most criminal defense attorneys are aware that a serious criminal conviction can have a negative impact on a noncitizen’s ability to remain in this country.

But virtually all the attorneys I talk to are surprised when they are told about how drastic the immigration consequences can be even for those convicted of relatively minor crimes. As Justice Mosk of the California Supreme Court has put it, “[i]n recent years, the immigration consequences of criminal convictions have verged on the monstrously cruel in their harshness compared to many of the offenses on which they are imposed.” In *re Resendiz*, 25 Cal. 4th 230, 255 (2001) (Mosk, J., concurring and dissenting).

During the 1990s, Congress revised

our immigration laws in two crucial ways. First, it significantly expanded the number and type of offenses that would be subject to the harshest immigration consequences. Second, Congress eliminated or severely restricted the forms of discretionary relief that allowed noncitizens to avoid deportation if they could show compelling equities.

The most dramatic changes occurred in relation to the concept of “aggravated felonies” under the immigration statutes. Prior to 1990, those statutes defined “aggravated felony” to include only such offenses as murder and illicit trafficking in drugs or firearms. By 1996, that category had been expanded to include even misdemeanor offenses that were neither “felonies” (i.e. punishable by more than one year in prison) nor “aggravated” (as that term might be commonly understood). At the same time, Congress was making individuals convicted of offenses falling within the “aggravated felony” category ineligible for virtually all relief from deportation. Notably, these drastic consequences apply even if the individual has long been a “permanent” resident of our country.

It is because of these changes that the hypothetical situation outlined above is possible. While “John” is not a real person, his situation is only a composite of actual cases playing out throughout the country. For instance, a 37-year-old woman in Rochester, NY was facing permanent deportation to Italy for minor shoplifting

convictions even though she had been a permanent resident since age 5 and had been diagnosed as a kleptomaniac. Similarly, the Fifth Circuit recently upheld the deportation of a Vietnam veteran who had been a permanent resident since 1960. Prior to 1996, these individuals would have at least had a chance to make a case before the immigration courts that their convictions did not merit deportation in light of the other equities in their case, but that is no longer possible under current law.

All of these changes to our immigration laws mean that whatever opportunity a noncitizen may have at avoiding deportation often depends on how his

or her criminal proceeding is handled. In other words, there will be little that an immigration attorney can do for an individual if he or she has already been convicted of an offense considered an “aggravated felony.”

But there may be much that a defense attorney can do to mitigate the negative immigration consequences of a conviction when he or she crafts a plea deal. Consider the situation of our hypothetical noncitizen “John”: his offense would be considered an “aggravated felony” because it is a theft offense for which he received a sentence of one year or more (suspended sentences count the same as fully-served

sentences under immigration law). If John’s defense counsel had modified the plea deal so that the suspended sentence was not *one year* but *364 days*, then John’s offense would not have been considered an aggravated felony and any immigration consequences would have been relatively minor.

As this example illustrates, even a basic understanding of the immigration consequences by defense attorneys can go a long way in ensuring that noncitizens’ rights are protected. Our hope for this project is to empower defense attorneys to be better advocates for their noncitizen clients.

Reflections from 2005 Liman Undergraduate Summer Fellows

Over this past summer, seventeen undergraduates from four institutions (Barnard, Brown, Harvard and Yale) spent their breaks working in public interest law. The Summer Fellows had some terrific experiences, entailing real responsibilities in placements that covered a range of areas: criminal law, domestic violence, education adequacy, environmental law, immigration, law and technology, low income housing, and youth rights. We have posted the reports from all seventeen Fellows on our website. We reprint a sampling of those reports here. We asked our Summer Fellows to tell us about the kind of projects they worked on as well as to select a particularly memorable experience to describe in more detail. Below you will find reports from students at Barnard, Brown, Harvard and Yale. This coming summer, Princeton students will join the fellowship.

Maria Fitzgerald

Barnard College '06

This summer, I interned at Sanctuary for Families, a large nonprofit organization devoted to serving victims of domestic violence in the New York City area. More specifically, I was working in their Center for Battered Women’s Legal Services (CBWLS) for the Courtroom Advocates Project (CAP). The Courtroom Advocates Project recruits, trains, and supervises New York law school students and law firm summer associates to serve as advocates for victims of domestic violence seeking orders of protection in NYC Family Court. The staff consists of four attorneys who supervise the advocates’ individual cases, take over complicated cases from them, and represent those petitioners as Sanctuary clients. There is also a project assistant (a non-lawyer), who provides general program support as well as legal and non-legal assistance

to clients. Though I interacted with the entire staff of CAP, as well as many other members of the CBWLS staff, I worked most closely with the CAP Director and the Project Assistant.

Working with CAP as their undergraduate (and only) intern has been an intense learning experience. From my ten weeks there, I have gained knowledge ranging from organizational skills and project management to domestic violence law and the intricacies of the various court systems of New York State. Following a week-long training session during which the interns gained an informal understanding of the various projects at the legal center (matrimonial, immigration, and community liaison), I was fortunate to be involved in every aspect of CAP. This included everything from training and recruiting the law

students and organizing their court dates to processing their cases after they returned from the initial court dates to following up with their progress and helping them to prepare for their adjourn dates. I also assisted the individual attorneys with their own cases (these were more complex than simple orders of protection cases), following up with former clients, obtaining resources for the clients (including food and clothing), and keeping track of each case as it developed.

I spent a significant portion of most days collecting and tracking information regarding each CAP case as it came in, as well as any trainings, meetings, or talks given or attended by CAP attorneys. All the Sanctuary attorneys keep and share these records among themselves for general reference and grant-writing purposes. These records are also

important for tracking the relationships Sanctuary staff members form with any group or individual who may interact with victims of domestic violence. Throughout the summer, I also worked on individual grants, drafting parts of applications for both the African and the South Asian Community Liaison Projects. In addition, I drafted a few emergency fund requests for CAP clients -- ranging from money to relocate a large family away from the abusive spouse, to simply paying a utility bill. I regularly conducted over-the-phone legal intakes, assisting callers who contacted Sanctuary seeking legal assistance.

I went to court four times over the course of the summer, twice as an advocate and twice to accompany CAP attorneys arguing their cases. During my first time as an advocate, I met a petitioner in Bronx Family Court who was filing for a temporary order of protection against her husband of ten years. Though she was born and raised in New York, Spanish was her dominant language. With the help of her brother to translate, I assisted her in drafting her family offense petition, explained to her what she could expect from the process, sat and waited with her for several hours before her court appearance and, finally, accompanied her before the judge. She received a full stay-away order of protection for herself and

her child.

Less than a week later, the petitioner called to inform me that she had reconciled with the abuser. I was quite surprised and concerned, and I made sure that she knew she could go back to court any time she felt threatened. Seeing how visibly shaken she was at court, and then her complete change in attitude a few days later, made me appreciate the complexity of the cycle of domestic violence in a relationship and the nature of my role as her advocate. Like the lawyers with whom I worked, I could only show her the help available and assist her when she chose to take advantage of our resources.

My second experience as an advocate was assisting a woman at her court return date, with her abuser, to obtain a permanent order of protection. The judge would not allow me to sit with the petitioner or to speak. The petitioner handled herself with confidence and received all the terms she requested. Her spouse, the abuser, tried to approach her but backed away when I made my position as an advocate known. Apparently worried by my presence, he tried to explain his own custody concerns to me and then left both of us alone.

On my third trip, I accompanied one of the attorneys to a hearing regarding an order of protection and custody in a case for a woman from Sierra Leone, about

four years older than I am, and her two young children who sought protection against her dangerously abusive husband. I stayed with the client and her children as they waited at court, helping with her children, answering her questions, and keeping track of the husband's whereabouts in the waiting area.

My fourth and final visit to court was in Manhattan Family Court. I accompanied the CAP Director into the courtroom and sat in the courtroom as she argued a case for a grandmother's custody of her murdered daughter's two children. Three other lawyers were in the courtroom: the children's law guardian, the children's father (who is being held for their mother's murder), and the stepmother (current wife of the father). I look forward to hearing how the remainder of the case unfolds.

My favorite part of this internship has been working directly with clients themselves -- particularly doing legal intakes. I feel fortunate to have been for many the first person at CAP with whom a victim of domestic violence shares her story, and to have been able to help her in a substantial and real way. I find that using the law and legal system to enable clients to change their lives for the better can be a source of empowerment and growth for them and for me.

Xaykham Khamsavoravong Brown University '06

After spending nine months at the Rhode Island Public Defender's Office and four at the Rhode Island Attorney General's Office, it occurred to me that I should take a look at the world of civil law. I decided to use my Liman Fellowship to work at the Providence office of Rhode Island Legal Services (RILS). A lively, open-door office, attorneys and staff are constantly consulting one another regarding cases, or the daily injustices that occur in the chambers and dark corners of civil court. Despite the constant frustration, a characteristic of RILS is that everyone

seems to be happy with their job.

One thing that is striking about RILS is the few support staff that assist paralegals and attorneys. Because of my familiarity with the state's courts and agencies, I was able efficiently to assist attorneys with their work by obtaining and reviewing files, checking for body attachments and subpoenas with the court's clerks, and escorting clients to and from administrative hearings. Bouncing week to week to the unit that needed the most help, I served on an ad hoc basis for the first month of the summer. Within these

weeks, I standardized and drafted the office's Social Security medical forms for doctors to fill out, researched regulations on ex parte contact for administrative hearings, and researched the state's welfare to work programs established by the 1998 Workforce Investment Act.

For the second half of my summer, the office decided that my experience would be best expanded by working with a young Georgetown Law graduate. Originally hired as a Skadden Fellow, the attorney works for the Education Law unit of RILS. Advocating for

children struggling to stay in school, her work, like much work in this sector, can often seem to be like treading water. In addition to casework, she heads the Education Subcommittee. The Education Subcommittee is composed of leaders from community organizations who are dedicated to addressing the state's embarrassingly high dropout rate. The specific charge of the committee is to investigate if many dropouts are actually pushouts (children implicitly or explicitly told to dropout) and if that is the case, to fix it. I worked alongside this lawyer researching the dropout rate and pushout issues across the nation, preparing presentations, interpreting the Department of Education's statistical data, and meeting with interested organization leaders to get them on board with our project. As a native of the state, with cousins in the very school systems facing 52% drop out rates (and equally sobering 62% graduation rates), it is a project I have latched onto and plan to stay onboard with as long as time allows.

I've lived in Rhode Island my entire

life. I've had the privilege of attending the most advantaged public school system in the state, and continued my good fortune at Brown University. Always in the back of my mind are my cousins. They were never alongside me in class; they were a fifteen-minute drive away, but it seemed like a country away. Their lives were so different; they talked of fights in school, teachers who refused to listen to their ESL needs, and what it felt like to have classmates who had been told so many times that they wouldn't graduate and that they are on a track to failure. My family was always in my periphery, but as I look at the plethora of other issues my home state faces, the memory of my cousins struggling through school suddenly takes center stage; education is at the core of my state's problems.

I asked to work on the Education Subcommittee with the legal services attorney. The group is amazingly diverse, but uniquely focused on the issue of preventing high school dropouts. All members passionately and eloquently spoke about their experiences with the

issue at hand and what they believed to be the solutions. At the first meeting, I watched my young mentor harness all of these ideas and tactfully unite the group, then re-channel the group's momentum in one direction. In one sense, she is a mediator and a coordinator; on the other she is an attorney, with the power of her knowledge of the law behind her word. I watched as she was challenged by the federal regulations that limit the community advocacy work that a legal services attorney can undertake. The tact and ingenuity with which she acts in order to find better solutions to the problems her clients face was amazing to me.

The amount of energy and passion in the field of public interest law always stuns me, but the matched enthusiasm from other professionals with parallel goals was equally inspiring. The ability to pull these organizations together to work in tandem is not the work of an average attorney; rather it is the work of the public interest attorney of the future, an advocate for not only the indigent, but the public.

Andrea Yang

Harvard College '06

At the heart of American legal services is advocacy, the act of giving voice to those who are often marginalized as "others" for their poverty, their race, and even their sex. Greater Boston Legal Services (GBLS) in Boston, Massachusetts, acts as a medium through which the narratives of these voiceless individuals bleed into the non-marginalized world. Its advocacy efforts call attention to the socially marginalized, insisting on their presence and the necessity of legal aid and reform. Through public policy and education, GBLS aims to promote and defend the legal and civil rights of the poor.

I have spent much of my summer absorbing individuals' stories, whether through perusing their case files or listening to them in person. In many ways, my internship has been a haunting blitzkrieg into the inner lives of

individuals, offering me an uncomfortably intimate glimpse into the darker sides of employment, immigration, and family issues. Privy to ugly accounts of discrimination, corruption, and abuse, I have in response attempted to translate my shock and anger through various forms of advocacy. Through interpreting, I have helped clients communicate with attorneys. Through writing, I have drafted a newspaper article and hearing testimonies. Through public speaking, I have helped lobby at the State House, and participated in a community picket.

The process of becoming familiar with clients through legal services was, in many ways, quicker and more intense than getting to know people in an everyday context. At times, I have felt artificially intimate with clients by knowing about their medical,

educational, and employment histories before meeting them in person, or rapidly learning about such sensitive information through a cathartic intake session or phone call. Because I had no personal ties to them, often clients freely discussed what troubled them. In response, I unexpectedly found myself more open-minded in listening; I made fewer judgments about their character and motivations. Instead, I focused on strategies to better their situations. In the sense that I felt we had more open dialogue, these relationships formed through legal services have felt more genuine than artificial. This observation has made me rethink what advocacy entails. I have a suspicion that listening more often and openly is a crucial step in giving voice more thoughtfully and accurately.

Working primarily with Chinese immigrants in GBLS's Asian Outreach Unit (AOU) has lent a spin on the idea of giving voice. With limited proficiency in English, AOU clients are voiceless in an alternate sense, often requiring interpretation and translation services. In addition to helping AOU attorneys conduct weekly intakes in Mandarin at outreach sites in Chinatown, on several occasions I acted as an interpreter for the Volunteer Lawyers Project in Downtown Crossing.

At the beginning of the summer, I hoped my conversational skills in Mandarin would expand to encompass legal and technical diction. They did! (I can now discuss one's immigration status, divorce options, or personal assets.) But more interestingly, I began to realize that precision did not necessarily guarantee clarity. In other words, despite all the legal jargon that I learned, too often it meant little to clients who, for example, recognized "Massachusetts health insurance" not by its literal translation, but rather, by relevant image-evoking phrases ("bai ka," or "white card"). Oddly enough, I was thus forced to articulate myself more clearly through non-legal vocabulary.

Nonetheless, I have come to value precision in interpretation. Having curbed my initial tendency to simplify what clients had to say by summarizing their information, I eventually grew comfortable with assuming the "I" when interpreting. Because I was to interpret word for word, the client's "I" became my "I"; her husband became my husband; her problem became my problem. In assuming her position by acting as her voice, I felt closer to understanding her situation and perspective by interpreting as precisely as possible.

Writing as a means of advocacy was personally rewarding, because my

efforts in researching laws, distilling information, and brainstorming potential solutions resulted in tangible products of empowerment. Toward the end of my internship, I wrote an article entitled "Overcoming Language Barriers for Immigrants: Requesting and Receiving Language Assistance from Federally-Assisted Programs." This article presented common caveats in current interpretation and translation services in federally-assisted programs, and the need for more efficient and accurate language assistance.

I also drafted various testimonies in support of proposed legislation pushed toward legislative reform. In support of an Act Establishing a Temporary Worker's Right to Know (MA Senate Bill 1101), I drafted two testimonies: one on behalf of the executive director at CPA, and another on behalf of a temporary worker, who felt he had been mistreated by his boss.

I found writing the worker's testimony far more difficult, precisely because of its relatively subjective nature. In addition to the facts of his case, I wanted to include his frustration and sense of powerlessness. I struggled with questions of representation: how could I most accurately convey his emotions? Should I dramatize the rhetoric with the goal of moving the Joint Committee on Commerce and Labor? Should I adopt the writing style of a temporary worker, presumably with less elegant prose? What assumptions was I thus making about the worker's writing abilities and his aims?

In an attempt to avoid misrepresentation, I met with the worker to review "his" testimony, word for word, to ensure that this document requiring his signature was as accurate as possible. When he signed the testimony willingly, pride initially rushed through me: I had helped to give him a voice. Moments later though, he expressed that he did not feel empowered. So what if his story was now documented?

He still couldn't collect the pay withheld by his boss, because he lacked his boss' name and contact information. I re-emphasized that his testimony would support a proposed bill aimed to prevent his situation from repeating. Yet the realization that the solution was, indeed, so far off in the future, not even to be guaranteed – and that there was little I could do for him concretely and immediately – deflated my earlier sense of mini-triumph.

Attending the hearing in which these testimonies were presented, however, restored some of my faith that even if the proposed legislation did not pass, at least these voices were being heard by people in the community. Members of the Commerce and Labor Committee sat at the front of the room. Workers and their advocates filled the benches, spilling into a sea of people that stood alongside the walls. Of those who gave testimonies at the front of the room, some were advocates; others were actual workers, many of whom struggled with English in their delivery. The body heat of the masses stifled the air, but in no way curbed people's energy, as workers applauded and cheered loudly after a testimony from their group was given. I was particularly moved by a moment in which one advocate spoke on behalf of the Latino workers. These workers wore purple t-shirts and stood silently in the back of the room, each person holding a piece of paper with his/her name on it. The name tags marked the individual identities which comprised the group, and the flood of purple shirts accentuated the workers' unity in purpose, as vocalized through their advocate's testimony. Their silence underscored their lack of voice due to language and social barriers, but it came across as a statement of resolve and presence, rather than of submission and non-existence.

Robert Lee

Yale College '05

The Electronic Frontier Foundation (EFF) is a San Francisco-based non-profit organization that seeks to protect free speech and privacy rights in the context of technology use. It was founded in July 1990 as a result of *Steve Jackson Games v. U.S. Secret Service*, a case which, among other things, recognized electronic mail as a valid form of speech protected by the First Amendment.

Over the past ten years, EFF has been instrumental in ensuring that technology policies and court decisions do not violate nor restrict citizens' "digital rights." In *DVD-CCA v. Bunner* and *DVD-CCA v. Pavlovich*, EFF defended Andrew Bunner's and Matthew Pavlovich's First Amendment right in their republishing of DeCSS, a software program that decrypts data on DVDs. More recently, EFF has been working on issues related to electronic voting, blogging, digital rights management technology, broadcast flags in digital television broadcasts, radio frequency identification, and the USA PATRIOT Act. This past March, EFF represented StreamCast Networks before the US Supreme Court in *MGM v. Grokster*.

In pursuit of its goals, EFF often acts as counsel, litigant, and *amicus curiae* in court cases. It also educates policymakers and the public on current technological issues through its web page, white papers, and lectures. It has twenty-six staff members who work with outside attorneys and other non-profit organizations such as the American Civil Liberties Union and the Electronic Privacy Information Center.

At EFF, I was assigned the task of investigating color laser printers and their potential threat to user privacy. A board member of EFF and director of the Internet Archive learned from a November 22, 2004, PC World article that "several printer companies quietly encode the serial number and the manufacturing code of their color laser printers and color copiers on every document those machines produce. Governments, including the

United States, already use the hidden markings to track counterfeiters." He recognized that with this counterfeiting deterrence mechanism came privacy risks for users who print anonymously.

Although manufacturers and the United States Secret Service (the agency given exclusive jurisdiction over counterfeiting cases) claim that they use the hidden markings solely to deter and to investigate counterfeiting activities, no law prevents them from using the markings to identify the machine involved in anonymously printed color documents. The absence of legislation regulating the technology means that the Secret Service could potentially use the markings for purposes unrelated to counterfeiting deterrence and investigation. Since free speech and anonymity are inextricably linked, EFF decided to look into this technology.

The first component of my project consisted of verifying that the hidden markings, allegedly in the form of tiny yellow dots, were indeed being printed over color documents. I began by researching the Internet to find information on the technology used to print the yellow tracking dots. Reliable facts were scant, but conspiracy theories were many. Only one other article existed on this technology, and it was an earlier PC World article that described Dutch railway law enforcement officials' use of the technology in investigating a large-scale ticket counterfeiting operation. Although it provided some new information, it did not describe the technology in sufficient detail.

I decided to contact manufacturers for more information. I chatted online with a Xerox employee who claimed to know nothing about this technology. He wrote that he did not know yellow tracking dots were being printed by Xerox color machines onto documents (the November PC World article stated that several Xerox models used the technology). Although I was highly skeptical of the employee's lack

of knowledge, in retrospect I believe him because manufacturers have not publicly announced or discussed this technology before this past year. In not disclosing the technology to the public, Xerox has seemingly also avoided informing its entry-level employees about it. My telephone interview with a Xerox senior research fellow was more fruitful. He had been quoted in the November PC World article and had confirmed that several Xerox models printed yellow tracking dots onto documents. During the telephone interview, he reconfirmed many statements made in the PC World article and provided several other details about the technology.

Although he had attested to Xerox's use of the technology, I needed to verify that color machines actually printed the alleged hidden markings. I compiled a list of local printing stores where I could print color documents. I then designed test sheets and took them to the stores where I ordered their printing. Upon receiving the outputs, I examined the sheets for small yellow dots. To my amazement, all of the color machines that I tested except one printed the yellow tracking dots.

Finding the yellow tracking dots was exciting. For the first three weeks of my internship, the dots' existence was merely an unproven and unobserved allegation. I had never seen these tracking dots nor heard of anyone else's discovery thereof. Despite the November PC World article, which confirmed the printing of the dots, there was a small possibility that I would not be able to detect them. Given this uncertainty, I was delighted to find the yellow tracking dots on test sheets when I examined printouts from a FedEx Kinko's store. Many individuals at the office were interested in the discovery and were fascinated that manufacturers would print tracking information on their machines' documents. Detecting the dots was a milestone for the project.

Knowing that color machines printed tracking dots onto documents, I proceeded

to the second part of my project: attempting to decipher the encoded message of the dots. I decided to focus on the structure of the dots printed by the Xerox DocuColor 12 model. My supervisor and I discovered that the dots printed by this model resembled a computer punch card. Unfortunately, we were unable to decipher the dots' message. Further work is needed to understand what information these dots could be potentially encoding.

During my internship, I wrote two documents. One was a white paper that summarized the current results of the

printer project and solicited printouts from the general public. It was exciting to have people send their test sheets to us for analysis; their participation demonstrated that this project was important to them. People were writing about the tracking dots in blogs. The media also took note of the project. The Register, vnunet.com, Slashdot, Investor's Business Daily, and a TV show have covered or will cover the results, and their publicity will help increase public awareness of the potential privacy risks in using color laser printers that have this marking feature. The second

document was a Freedom of Information Act (FOIA) letter, which requested Secret Service records related to the marking technology. Since it was important to determine the Secret Service's involvement in promoting this technology and since the agency might have reasons to withhold information, submitting a FOIA letter was necessary. An EFF senior staff attorney taught me the requirements of a FOIA letter and proofread numerous drafts. As of the time of writing this report, the Secret Service had not yet responded to EFF's request.

Updates from Former Liman Fellows

Below are highlights of some of the work of several of our current and former Fellows.

Current Liman Fellow, **Eliza Leighton**, appeared on the November 16th show of Tucker Carlson, the conservative commentator. Eliza spoke about the lawsuit her host organization, CASA of Maryland, had recently filed on behalf of several immigrants who had been denied driver's licenses. According to the lawsuit, Maryland law clearly prohibits the state's Department of Motor Vehicles from considering immigration status when issuing a license.

Cyd Fremmer, who reported in detail about her work in Boston at the EdLaw Project, has joined the criminal defense firm of Sheehan & Reeve. The firm has been in New Haven for more than twenty years. Soon after beginning, Cyd had her first trial in which her defense team represented a defendant accused of murder. Hence, she has had quickly to adjust from youth advocacy to criminal defense.

Robert Hoo has finished working on inclusionary zoning at Legal Services of Northern California and has now moved to Los Angeles where he is working with an Industrial Areas Foundation (IAF) project. The project, called "One LA," uses a range of community organizing tools, including visiting and having meetings

in people's homes to bring community members together to discuss changes that they would like to see brought about.

Tom Jawetz, who had been working on immigration at the Washington Lawyers' Committee for Civil Rights & Urban Affairs in DC, has been awarded a two-year litigation fellowship with the ACLU National Prison Project (NPP). Also located in DC, the NPP focuses on issues such as prison overcrowding, prisoners' lack of access to appropriate and quality medical and mental health care, and violence in prisons.

Lisa Powell has moved from Seattle and her work at the Northwest Immigrant Rights Project (NIRP) to Washington, D.C., where she has joined the union-side labor firm of Bredoff & Kaiser. Lisa reports that NIRP recently secured additional funding so that it is now able to hire a lawyer to replace her and to continue her work with immigrant victims of domestic violence.

Josh Civin has finished his fellowship at the NAACP Legal Defense & Education Fund and remains in Washington, D.C. where he is clerking for Justice Ruth Bader Ginsburg on the United States Supreme Court.

Andrea Marsh continues her work to reform Texas' indigent criminal defense system. Andrea started her reform work as a Liman Fellow, then continued when she was as a Soros Criminal Justice Fellow under the auspices of the ACLU of Texas. This fall in Austin she launched her own non-profit, the Fair Defense Project, which will continue to press for indigent criminal defense reforms. Andrea received funding for her new organization from The Justice Project.

Lisa Daugaard, who was a Liman Fellow at the Seattle Public Defender Association and who remains at the organization, returned to the Law School in September to be a "mentor-in-residence" for current students and to speak on a panel with Dean Harold Koh and fellow alums, Brandt Goldstein and Michael Wishnie. That panel spoke about their experiences working on litigation on behalf of Haitian refugees while they were law students. That litigation in turn is the subject of a new book, *Storming the Court* by Brandt Goldstein.

Seventeen students, listed below with their host organizations, were our 2005 Summer Fellows.

Barnard College

Manmeet Kaur Bindra
Human Rights First, NY, NY

Maria Fitzgerald
Sanctuary for Families, NY, NY

Lyudmila Gorokhovich
Global Youth Coalition, NY, NY

Brown University

Maura Finigan
USPIRG, Washington, DC

Xaykham Khamsyvoravong
Rhode Island Legal Services, Providence, RI

Rachel Lauter
Bay Area Legal Aid, Oakland, CA

Emma Rebborn
Education Law Center, Newark, NJ

Harvard University

Robert Rogers
Legal Aid Society of New York, NY, NY

Elina Tetelbaum
The Forensic Panel, NY, NY

Cindy Nguyen
San Diego Volunteer Lawyer Program, San Diego, CA

Andrea Yang
Greater Boston Legal Services, Boston, MA

Yale College

Drew Alt
Political Asylum/Immigration Representation Project, MA

Julian Darwall
National Center for Youth Law, San Francisco, CA

Rachel Goodman
Business and Professional People for the Public Interest, Chicago, IL

Joshua Johnson
ACLU of Texas, Austin

Mateya Kelley
Illinois Coalition for Immigrant and Refugee Rights, Chicago, IL

Robert Lee
Electronic Frontier Foundation, San Francisco, CA

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Friday, March 31, 2006

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Enabling the Disabled: Work, Education,
Treatment & Welfare

Panel II

Life, Death & Strategy: The Death Penalty,
Life Without Parole, & Juveniles

*Luncheon and Remarks by the Honorable
Stephen Reinhardt*

Panel III

Organizing & Reorganizing: The Challenges
for Immigrants & Labor

Panel IV

Communities Of and For Change: The Local,
the National, the Global

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