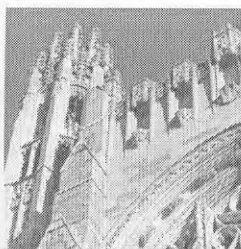


## Inside this issue

Undergraduate Fellows . . . .	3
Spotlight on Current Work . . .	4
More News from Fellows . . . .	6
Announcement of New Fellows . . . . .	8



# Arthur Liman Public Interest Newsletter

Summer 2003

## Annual Liman Colloquium

The Sixth Annual Arthur Liman Public Interest Colloquium - "Portraying the Public Interest: Clients, Mass Media and Social Policy" - was held on March 6-7, 2003. The event was co-sponsored by *Legal Affairs*, a magazine of Yale Law School, and Yale's Poynter Journalism Fellowship. Filmmaker Doug Liman, Arthur Liman's son, opened the conference by discussing the interplay of mainstream media and social policy. Liman, who directed *Swingers* and *The Bourne Identity* among other films, noted his own experience using film as a medium for subtle social messages. After actors smoked in one movie, he received complaints. Since then, Liman does not show his actors smoking onscreen. Liman posed the broader question of how the media might be more effectively used as a messenger of public policy and challenged all present, including himself, to continue creatively to consider how to do so.



Filmmaker Doug Liman



Left to right: Colloquium panelists Ian Solomon, Tania Galloni, Andrea Marsh, David Menschel, Amy Meselson, and Dean Anthony Kronman.

The following day, this year's Liman Fellows started the discussion by considering their roles in bringing their clients' experiences to the public and the degree to which that is necessary or appropriate. Tania Galloni, working at the Migrant Farmworker Justice Project in Florida, has publicized the problem of farmworkers' exposure to pesticides. David Menschel described how his host organization, the Innocence Project, actively engages in reporting on exoneration of clients. Amy Meselson, at the Legal Aid Society of New York, detailed her efforts to coordinate a unified court docket for juvenile immigrants in detention. Andrea Marsh concluded with comments about the role public opinion played in supporting legislation in Texas to revamp its indigent criminal defense program - a system Andrea is monitoring with her organization, Texas Rural Legal Aid. Under the guidance of Dean Ian Solomon, discussion followed.

After hearing about on-the-ground work of advocates, the audience turned its attention to print journalists on a panel moderated by Emily Bazelon (YLS '00, and senior editor at *Legal Affairs*) and by Andrew Goldstein

(YLS '05, and former reporter at *Time*). Lincoln Caplan, editor of *Legal Affairs* and Knight Senior Fellow at the Law School, noted that public interest advocates and journalists have much in common in terms of a commitment to addressing social problems. However, he cautioned that each plays a very different role: advocates are the champions of their clients' cases or causes while journalists must make all sides of the issue plain. Tamar Lewin, from the *New York Times*, followed with some of her experiences in building trust with advocates. She gave a powerful

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Left to right: Colloquium panelists Andrew Goldstein, Tamar Lewin, Emily Bazelon, Brendan Koerner, Jason DeParle and Lincoln Caplan.

## Colloquium con't

example of an erroneous lead that required a story to be pulled. Lewin reminded advocates that accurate information is the bedrock of building a relationship with a reporter. Jason DeParle, also from the *New York Times*, discussed how he convinced his paper to devote extensive space to welfare reform and the balancing he did when reporting on complicated legislation to an audience unfamiliar with the topic. Brendan Koerner, a New America Fellow, concluded the panel by explaining how journalists place their pieces and the pressures that drive publications' choices of topics.

After lunch, Colloquium participants gathered to hear from public interest advocates responsible for public relations. The panel included Maureen McFadden of NOW Legal Defense, Dana Vickers Shelley of the Annie E. Casey Foundation, Dennis Parker of the NAACP Legal Defense Fund, and was moderated by Judith Resnik, Arthur Liman Professor of Law. McFadden detailed her work creating a short documentary video about women rescue workers at New York's Ground Zero. McFadden discussed NOW Legal Defense's strategy to use the video to boost its larger efforts on behalf of women firefighters in New York. Shelley highlighted the importance to advo-

cates of building connections with mass media and made practical suggestions for improving an organization's public relations. Parker concluded by noting how much had changed for lawyers, who were once warned against talking to the press. Now, mass media is central to public interest work.

The final panel of the day focused on how effectively to craft client narratives. Bonnie Allen of the National Legal Aid and Defender Association described her organization's national research on the public's perception of free legal services for the poor. Allen noted the research found the public re-

sponded more positively to particular client stories rather than broad brush social commentary. Barry Scheck, of the Innocence Project and Cardozo Law School, followed with remarks on the responsibility of the public interest advocate to persuade the mass media to become interested in the client's story. Using examples from his own work, Scheck demonstrated the potency of good narrative. The panel was moderated by Deborah Cantrell, Director of the Liman Program, and Jessica Sager, executive director of All Our Kin and a former Liman Fellow.



Left to right: Colloquium panelists Judith Resnik, Maureen McFadden, Dana Vickers Shelley, and Dennis Parker.



*Left to right: Colloquium panelists Deborah Cantrell, Bonnie Allen, Barry Scheck, and Jessica Sager.*

*All photographs by Harold Shapiro*

## Limán Undergraduate Summer Fellowships

Through the generous assistance of Doug Liman, the Arthur Liman Public Interest Program at Yale Law School is delighted to announce the expansion of its undergraduate summer fellowship program. This summer, in addition to students affiliated with the Phillips Brooks House at Harvard University, undergraduates at Brown University and Yale University will also receive support. Recipients of the Brown fellowships include: Katherine Burdick ('04), who will work at Rhode Island Family Advocacy Program; Louisa Lombard ('03), working for Small Arms Survey; Emily Timm ('03) at CASA of Maryland; and, Dorian Wu ('03), working at Rhode Island Public Defender. The Yale fellowships will go to Davenport College stu-

dents: Maeve Herbert ('04), working at The Bronx Defenders; Joanna Lydgate ('03), working in New Haven at Youth Rights Media, Inc.; and, Josie Rodberg ('03), working in Denver at the Harm Reduction Project.

*Inaugural Liman Undergraduate Summer Fellows: (left to right) Louisa Lombard, Josie Rodberg, Maeve Herbert, Joanna Lydgate, Katherine Burdick, and Doug Liman. Not pictured: Dorian Wu and Emily Timm*



# Spotlight on Legislative Advocacy

*Throughout the year, we ask our fellows to report in more detail about their work. In this issue, we called on Tania Galloni, at the Migrant Farmworker Justice Project in Florida. As a May 26, 2003 article in the Naples Daily News noted: "Fresh out of Yale University's law school, farmworker advocate Tania Galloni got a rude introduction into the Byzantine ways of state politics, Tallahassee-style." Here is how Tania described her experience.*

Shortly after I began my fellowship, I was doing some legal research when I discovered something: Florida's only farmworker pesticide statute was no longer on the books. In 1994, Florida enacted a "right-to-know" law, giving farmworkers access to more health and safety information about the pesticides used where they work than federal pesticide regulations provide. But thanks to a built-in sunset clause, that law had automatically expired.

I tracked down the Tallahassee lobbyist who worked on the bill nearly a decade ago, and also notified a number of farmworker organizations, to pass on the news. Everyone was stunned – they had worked for two years to have this law enacted. It had been the product of a working group of grower representatives, farmworker representatives and legislators. When the compromise bill was introduced, it had sailed through the legislature unanimously. At the time, many advocates were not aware the bill included a sunset clause.

Though it hadn't been part of my fellowship plan, the question arose whether I should work to have the law re-enacted. The legislative session was scheduled for sixty days between March 2003 and May 2003, but since we were in December 2002, we were already off to a late start. I was told that in Florida, work on legislative proposals should begin the summer before the session. In addition, some advocates

questioned the value of fighting for this law. When farmworkers are in such precarious economic situations, is pesticide safety a luxury issue? What about a weakness in the legislation itself, which places the burden on farmworkers to request health and safety information of their employers? Or, more fundamentally, does access to information actually help keep people safe at all?

At my host organization, we decided the law was worth fighting for. Health and safety – a precondition to being able to work at all – are not luxury issues. We agreed that the specific piece of legislation was not ideal, but the law provided greater rights than farmworkers currently had, and could serve as a foundation on which to build greater protections. Lastly, we figured information does help keep people safe. If farmworkers knew more about the specific pesticides used where they work, they might know to associate certain acute symptoms with pesticide poisoning and so seek medical attention sooner. Under the proposed law, farmworkers would have access to information about specific routes of entry for a pesticide, emergency first aid measures, and medical conditions that can be aggravated by exposure to that pesticide. Under existing law, farmworkers have access to pesticide-specific health and safety information *only after they become ill* from pesticide exposure.

I started by approaching farmworker representatives around the state to advocate for the bill. I distributed a memorandum in which I gave an overview of the rise and fall of the first bill – a history pieced together from institutional recollections, old news articles and internal memos – and described the continued need for the law. I also prepared a chart comparing the current law to the proposed law, and highlighting the added value of the new law. Although we contemplated tweak-



*Liman Fellow Tania Galloni*

ing the bill to make it stronger than before, lobbyist Karen Woodall persuaded us that our best chance to have the law re-enacted would be to introduce it as is.

By the end of December, the pesticide bill became one of four pieces of legislation that a coalition of farmworker groups around the state would support. I promptly enrolled in my first Continuing Legal Education class – Practicing before the Legislature – and registered as a lobbyist with the state.

I provided Karen with the original law's text, my overview memo, and my chart comparing the proposed state law to existing federal law. Karen found sponsors for the bill in the House and Senate and crafted a strategy for the bill's re-enactment. When the bill was put into drafting, I requested one change, even though we had all agreed there would be none: that the new bill be introduced without a sunset clause.

I then drafted talking points in Spanish and English to distribute to agencies and organizations in the community, and to use in farmworker training sessions. The Farmworker Association held trainings in February in north and south Florida, where we role-played how to meet with legislators to discuss issues of importance to farmworkers, including pesticide poisoning. Farmworker groups around the state pre-

pared to send weekly delegations to Tallahassee.

In the second week of March, we greeted the beginning of the legislative session with dozens of farmworkers from all over the state. Farmworkers and organizers in groups of four marched into every legislator's office, distributing information packets and meeting with legislators and staff. The two-day event ended with a press conference by the bill sponsors announcing the need for greater farmworker protections. In the news, the pesticide bill was noted in a brief piece by the AP in the St. Petersburg Times, and a full story in the Fort Lauderdale Sun Sentinel, which featured one of our clients who had been severely poisoned while working in a Miami plant nursery.

At the capitol, the pesticide bill was assigned to five committees in the House (including Commerce), and five committees in the Senate (including the Judiciary Committee). I remembered Professor William Eskridge's description of the committee process in my legislation class at the law school, and how committee chairs could act as "trolls" to guard the gates of each committee and ultimately block the progression of legislation. In Florida, under the rules of the House and Senate, the bill would have to pass at least one full substantive committee in each chamber. Subsequent committee chairs could waive hearing of the bill, withdraw it from their committee, and allow the bill to keep moving through the process toward the floor for a vote. But first the bill would have to be heard.

A colleague and I put together a list of all our contacts around the state who had expressed interest in this issue, including health care providers, unions, workers' comp lawyers, and social service agencies. I emailed the list urging individuals and organizations to contact their local legislators about the pesticide bill. In that email, I included a sample letter that people could send to their legislators and a county-by-county list of legislators and their contact information, with an asterisk by every committee member's name. The response from the community was enthu-

siastic, and this began a weekly series of "Pesticide Bill Updates" by email, with specific, targeted requests for action. Karen, who talked to legislators at every chance in every hallway, elevator and lobby, provided information from the capitol on those specific legislators we needed to target. In every email I sent to my contact list, I included instructions on how to contact the legislators and sample messages.

On April 10, we learned from news reports that twenty-one farmworkers picking oranges in Manatee County had been taken to local hospitals with symptoms of acute pesticide poisoning. Our paralegal, Raul Barrera, set off to track those workers down. The apparent mass poisoning had attracted media interest, and gave us a vehicle to talk about the problem of pesticide poisoning – and the pesticide bill – to the press. Over the next two weeks, articles and/or editorials on the pesticide issue appeared in the Sarasota Herald Tribune, the Bradenton Herald, the Tallahassee Democrat, the Naples Daily News, the Palm Beach Post, the St. Petersburg Times, and the Sun Sentinel.

In mid-April, we were finally called for our first legislative hearing. On April 14, the bill was heard first in the Subcommittee on Workforce and Economic Development and immediately following in the full Commerce committee. Although industry representatives had privately assured the bill's sponsors that they would not oppose the pesticide bill, representatives from the Florida Farm Bureau and the Florida Fruit and Vegetable Association testified against the bill at the first hearing. And although the Florida Department of Agriculture and Consumer Services had privately acknowledged that it still had the pesticide safety sheets required under the bill (which had been developed under the first bill in 1994), a DACS representative testified that the Department had "concerns" about the fiscal impact of the bill. Two farmworker representatives – from a delegation there that day including about twenty farmworkers – testified in favor of the bill, describing the problem of pesticide poisoning from experience. Toward the end of the hearing, I testified to clarify misstatements made by opponents of the bill and to respond to

technical questions posed by committee members. That morning, the bill was approved unanimously by the subcommittee. The opponents of the bill did not appear at the second hearing, and the bill passed again, unanimously, before the full Commerce committee.

By April 18, Raul Barrera found the poisoned farmworkers and we went together to talk to them about what had happened. An investigation was already underway by DACS, which apparently had begun to suggest that only one worker had ever been sick. According to the papers, the harvesting company speculated the illnesses had been caused by some kind of virus. The workers told me that late the morning of April 9, when they began picking oranges in a particular grove, one by one, the crew members suddenly fell ill. Workers felt extremely dizzy and weak; unsteady and unable to lift their arms, some rushed down from ladders afraid they would fall. Some workers vomited; others were shaking. Many laid down on the ground waiting for the symptoms to pass. The crew leader called ambulances and removed the workers from the grove. Workers were taken to the hospital and released later that night, on orders not to work for three or four days. Some workers improved quickly, others continued to feel symptoms for a few days, and then felt back to normal. One worker continued to feel ill – nausea and tremors – long after the incident. I contacted the company's workers' compensation carrier and local clinics to make sure that he continued to receive medical attention.

On April 22, the bill was heard in the Senate Agriculture committee. Anticipating no opposition (primarily because none of the opponents were present), I testified only briefly about the value of the bill. About a dozen farmworkers who were in attendance to testify waived their time in support of the bill. The bill passed again unanimously.

Having passed one full substantive committee in each chamber, the bill could now be withdrawn from the remaining committees and go to the floor for a vote. We began a concerted campaign to contact the chairs of the remaining committees and urge them to let the bill proceed

to the floor. Only ten days remained in the session.

Although substantive committee chairs in the House and Senate appeared prepared to let the bill go, DACS had filed a fiscal note claiming that the right to know bill would cost the Department \$500,000 in the first year, including expenses for six additional full-time positions and four new vehicles, and several hundred thousand dollars for years after that. It was widely recognized that the fiscal note was an attempt by the Department to make up for past cuts to their budget and for funding needs in existing programs – it had nothing to do with the pesticide bill itself. And although the Department claimed publicly to support the bill, tacking such a huge cost onto it was clearly a major blow. We focused a good amount of energy on urging the Department and the Commissioner of Agriculture to withdraw the wholly inappropriate fiscal note, but with no success.

It would have been difficult for most parties to come out publicly and oppose a health and safety measure meant to protect Florida's most vulnerable population at virtually no cost to the state. But there are so many ways to kill a bill quietly, without having to take responsibility for it. In the end, everyone in the process simply claimed they had just run out of time. The legislators – who were not having much success getting anything of consequence passed this year – ran out of time. The Commissioner of Agriculture – who very lately conceded the fiscal note should be withdrawn – ran out of time. It was out of their hands. On May 2, the regular session ended, with the pesticide bill dead in committee.

The community coalition we have developed over these months remains committed to this issue and will take it up again next year. I hope that the press will also remain interested. We will work over the summer to draft a more comprehensive pesticide bill and prepare thoroughly for the battle ahead — now with a much better idea of what it is we are up against.

## More News From Current Liman Fellows



Over the last few months, David Menschel's fellowship with the Innocence Project has produced a number of exciting developments. As David explains:

In April, Innocence Project client Dennis Maher was freed after spending 19 years in prison for three sexual assaults that he did not commit. The Innocence Project had been working on Mr. Maher's case for almost a decade. The big break in the case came when a law student helped to discover evidence in the basement of the Middlesex County (Cambridge), Massachusetts courthouse that had long been missing and was thought to be destroyed. The exoneration demonstrated the fallibility of eyewitness testimony: all three victims had positively identified Maher as their attacker, and all three victims were wrong. As an April 6, 2003 *Washington Post* editorial cautioned, eyewitness identifications are "far less reliable than persuasive," and the Maher case "forces Americans to question whether eyewitness testimony – uncorroborated by other persuasive evidence – is reliable enough to send people to prison."

In another case, and after substantial pressure from the Innocence Project, the Baltimore County Police Department agreed to review the work of a police chemist whose misleading testimony in the case of Bernard Webster led to Mr. Webster's wrongful conviction. The audit has been expanded to include more than 480 cases on which the chemist worked.

A similar review has been undertaken at the Houston Police Department Crime Lab in the aftermath of the exoneration of Josiah Sutton. Police closed the lab after the Sutton case revealed the shoddy practices and misleading conclusions of the lab's DNA division. The

Harris County District Attorney's Office is currently reviewing more than 1200 cases in which the crime lab performed work, including a number of cases in which the defendant was sentenced to death.

Finally, the Innocence Project has recently published a number of resource guides on issues related to its criminal justice reform project – issues like mistaken eyewitness identifications and recording custodial interrogations. The guides, which include issue summaries, newspaper clippings, law journal excerpts, case law, and model legislation, have proved popular among state legislators, journalists, defense attorneys and even prosecutors and police officials. The Innocence Project hopes that the guides will help to get the word out about the causes of wrongful conviction and some possible remedies.



At the Legal Aid Society of New York, Amy Melselson continues to receive regular referrals of unaccompanied minors recently released from

detention centers around the country as well as undocumented children in New York City foster care. Most of her previously detained clients are from China or Latin America. She expects the New York City Immigration Court to begin operating a Juvenile Docket in May or June, which will allow her project to reach many more of the unaccompanied minors in removal proceedings in New York City.

Amy's project was the subject of a detailed article in the *New York Law Journal* on April 18, 2003. As reporter Anthony Perez Casino discussed, the centralized juvenile docket "would increase the likelihood that a single judge with an appreciation of the unique is-

sues facing children would hear the bulk of [juvenile] cases. These changes would also make it easier for volunteers to participate in the project.” The article also noted the strong support the project has garnered from large law firms, including Latham & Watkins and White & Case.



Andrea Marsh is working with a coalition of advocacy groups to monitor county compliance with Texas's Fair De-

fense Act and to improve county systems for providing counsel to indigent defendants. The Fair Defense Act was passed by the Texas Legislature in 2001, and for the first time requires Texas's 254 counties to report on various aspects of their public defense systems and to meet certain statewide

standards for the provision of indigent defense services.

This spring, Andrea has worked extensively with the Equal Justice Center to lobby against legislative efforts to roll back certain provisions of the Fair Defense Act and to weaken indigent defense reform in Texas. One bill currently pending before the Texas Legislature would return to the old practice of allowing judges to conscript lawyers to represent indigent defendants, even if those lawyers have not demonstrated that they are qualified or willing to do so. Another bill would allow counties to delay appointment of counsel for defendants released on bond until a defendant's first court appearance after indictment, which generally does not occur until weeks or even months after arrest. Andrea and other members of the Fair Defense Coalition were successful in marshaling broad-based opposition to both of these rollback bills, and to date both have been left pending in committee.

Andrea also has been working on affirmative legislation that would lead to further reform of Texas's indigent defense practices. She drafted testimony in support of a bill that would modernize county systems for providing appointment information to appointed counsel. Andrea also is working with coalition members to lobby for a bill that would extend several of the most important trial-level reforms contained in the Fair Defense Act to habeas proceedings in capital cases. The bill would require the Texas Task Force on Indigent Defense to develop minimum qualifications for appointed counsel in habeas cases and to screen attorneys for inclusion on a list of lawyers approved for appointment in those cases. The bill would also afford habeas petitioners a right to competent representation, and would allow a successive habeas petition upon a showing that counsel on the first petition did not competently represent petitioner.

## Announcement of 2003-04 Liman Fellows

**Adam Grumbach** (YLS '02) will join the Juvenile Rights Division of the Legal Aid Society of New York. He will represent disabled youth in delinquency proceedings in Family Court and focus on rights under the Individuals with Disabilities Education Act (IDEA). Adam hopes to expand the use of IDEA from child protection cases to delinquency cases. In addition to representing individual juveniles, Adam will collect data on the range of educational needs of Legal Aid's juvenile clients, create training materials for parents, students and other advocates, and establish new coalitions with other disability-rights groups.

**Kristen Jackson** (YLS '02) will work with Public Counsel in Los Angeles to create a program for immigrant youth in foster care to gain permanent resi-

dency status under federal immigration law's "special immigration status." Kristen's project will include direct representation of qualified juveniles; training about immigration law for public defenders, district attorneys, dependency court attorneys, and state court judges; and coordination of those cases among the various agencies working with eligible juveniles.

**Grace Meng** (YLS '03) will advocate for low-wage Asian workers in the Bay Area under the auspices of the Asian Law Caucus. Grace will represent individual clients in wage and hour claims, unemployment insurance claims and work place safety claims. Grace will develop a multilingual community education program designed to help low-wage workers understand their rights when laid off and to learn about job

training programs. Grace will also develop a longterm state and local legislative strategy to address these problems.

**McGregor Smyth** (YLS '99) will create a "Community Defender Resource Center" at the Bronx Defenders Association. The Resource Center will train public defenders on civil legal issues likely to arise for their indigent criminal clients. McGregor's project builds on his work as a Skadden Fellow where he created the Civil Action Project, providing comprehensive civil legal services to clients of the Bronx Defenders. The Resource Center will focus on the effects of criminal convictions for employment, housing, and public benefits. The Resource Center will host a hotline, a listserv and will post training materials on its website.

## Updates From Former Liman Fellows

*In each issue of our newsletter we will keep you updated on the activities of some of our former fellows.*

Marjorie Allard ('00-'01 Fellow) has joined the Northern California Innocence Project at Santa Clara University. The project began in 2001 and is one of approximately 20 such projects across the country.

Serena Hoy ('01-'02 Fellow) relocated from Washington, D.C., to Miami, Florida, where she works for the Florida Immigrant Advocacy Center. She is providing direct legal services to

low-income immigrants.

Alison Hirschel ('97-'98 Fellow) reports that she is negotiating a settlement of a lawsuit against the state of Michigan challenging its closure to new applicants of a program designed to allow home-based longterm care services. As Alison notes, the program allows individuals to remain at home instead of being institutionalized in nursing homes. Her clients include: a 43 year old with severe multiple sclerosis who wishes to be at home with his three children; a 29 year old quadriplegic nursing home resident, paralyzed

ten years earlier in a football game, who does not wish to live out his life in a nursing home; and, an elderly woman with Alzheimer's Disease who has been in a devoted marriage for sixty years and whose family wishes for her to spend her remaining years in her own home.